

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 11A-833E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF  
COLORADO FOR APPROVAL OF REVISIONS TO ITS WINDSOURCE PROGRAM.

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**INITIAL COMMISSION DECISION  
DENYING APPLICATION**

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Mailed Date: September 24, 2012

Adopted Date: August 29, 2012

**TABLE OF CONTENTS**

I. BY THE COMMISSION .....	3
A. Statement .....	3
II. EVIDENTIARY RECORD .....	6
III. BURDEN OF PROOF AND RELATED PRINCIPLES.....	8
IV. DISCUSSION.....	10
A. Parties. ....	10
B. The RES, RECs, the RESA, and the ECA. ....	12
C. History of the Windsource Program.....	18
1. Original Windsource Program. ....	18
2. Current Windsource Program.....	20
D. Limon II and Decision No. C11-1336.....	25
E. Relevant Statutory Provisions, Rules, and Decisions.....	29
V. WINDSOURCE STANDARD SERVICE .....	30
A. Public Service’s Proposal. ....	30
B. Positions of the Parties. ....	33
1. Public Service.....	33
2. Boulder.....	34
3. CF&I and Climax. ....	37
4. CHEN.....	37



5. Colorado Gas Producers.....	39
6. GEO.....	39
7. Glustrom.....	40
8. Interwest.....	41
9. Staff.....	42
10. WRA.....	43
C. Discussion and Conclusions.....	46
VI. WINDSOURCE LONG-TERM CONTRACT PROGRAM.....	48
A. Public Service’s Proposal.....	48
B. Positions of the Parties.....	59
1. Public Service.....	59
2. Boulder.....	63
3. CF&I and Climax.....	66
4. CHEN.....	67
5. Colorado Gas Producers.....	67
6. GEO.....	72
7. Glustrom.....	72
8. Interwest.....	73
9. OCC.....	74
10. Staff.....	78
11. WRA.....	83
C. Discussion and Conclusions.....	84
VII. ADDITIONAL ISSUES.....	89
A. Large Public Service Customers in the City of Boulder.....	89
B. Renewable Energy Advisory Group.....	90
C. Current Policy Regarding Automatic Cancellation of Participation in the Windsource Program.....	92
VIII. ORDER.....	94
A. The Commission Orders That:.....	94
B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING August 29, 2012.....	95



**I. BY THE COMMISSION****A. Statement**

1. On October 13, 2011, Public Service Company of Colorado (Public Service, Company, or Applicant) filed a Verified Application.<sup>1</sup> By that filing, Public Service seeks Commission authorization to change the existing Windsource program to the Windsource Standard Service and to add a new Windsource Long-Term Contract (Windsource LTC) offering.

2. On October 14, 2011, the Commission issued its Notice of Application Filed (Notice). That Notice established an intervention period and contained a procedural schedule. On December 21, 2011, Decision No. R11-1376-I vacated that procedural schedule.

3. On October 17, 2011, the Colorado Governor's Energy Office (GEO) timely filed its Notice of Intervention.<sup>2</sup> Decision No. R11-1376-I acknowledged GEO as an intervenor by right and a party in this proceeding.

4. On October 19, 2011,<sup>3</sup> Trial Staff of the Commission (Staff) timely filed (in one document) its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1403(b), and Request for Hearing.<sup>4</sup> Decision No. R11-1376-I acknowledged Staff as an intervenor by right and a party in this proceeding.

5. On November 14, 2011, CF&I Steel, LP, doing business as Evraz Rocky Mountain Steel (CF&I), timely filed its Petition to Intervene. Decision No. R11-1376-I acknowledged CF&I as an intervenor by right and a party in this proceeding.

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<sup>1</sup> The Application is Hearing Exhibit No. 17.

<sup>2</sup> After the evidentiary record closed and the Parties filed their statements of position, legislation changed GEO's name to the Colorado Energy Office. Because the evidentiary record in this case uses and refers to GEO, this Decision will use and refer to GEO.

<sup>3</sup> On October 19, 2011, Trial Staff of the Commission also filed a Motion to Hold the Application in abeyance. On December 13, 2011, by Decision No. C11-1336, we denied that motion.

<sup>4</sup> In its filing, Staff identified both litigation Staff and advisory Staff.



6. On November 14, 2011, the City of Boulder (Boulder) timely filed its Petition to Intervene. Decision No. R11-1376-I acknowledged Boulder as an intervenor by right and a party in this proceeding.

7. On November 14, 2011, Climax Molybdenum Company (Climax) timely filed its Petition to Intervene. Decision No. R11-1376-I acknowledged Climax as an intervenor by right and a party in this proceeding.

8. On November 14, 2011, the Colorado Energy Consumers Group (CEC) timely filed its Motion to Intervene. On January 5, 2012, CEC filed a Supplement to its Motion to Intervene. On January 10, 2012, by Decision No. R12-0017-I, CEC was granted leave to intervene by permission. CEC is an intervenor and a party in this proceeding.

9. On November 14, 2011, the Colorado Harvesting Energy Network (CHEN) timely filed its Petition to Intervene. Decision No. R12-0017-I granted CHEN leave to intervene by permission. CHEN is an intervenor and a party in this proceeding.

10. On November 14, 2011, the Colorado Independent Energy Association (CIEA) timely filed its Motion to Intervene. Decision No. R11-1376-I granted CIEA leave to intervene by permission. CIEA is an intervenor and a party in this proceeding.

11. On November 14, 2011, the Colorado Office of Consumer Counsel (OCC) timely filed a Notice of Intervention of Right, Entry of Appearance, and Request for Hearing. Decision No. R11-1376-I, acknowledged OCC as an intervenor by right and a party in this proceeding.

12. On November 14, 2011, EnCana Oil & Gas (USA) (EnCana) timely filed its Motion to Intervene. Decision No. R12-0017-I granted EnCana leave to intervene by permission. EnCana is an intervenor and a party in this proceeding.



13. On November 14, 2011, Interwest Energy Alliance (Interwest) timely filed its Petition to Intervene. Decision No. R11-1376-I granted Interwest leave to intervene by permission. Interwest is an intervenor and a party in this proceeding.

14. On November 14, 2011, Noble Energy, Inc. (Noble), timely filed its Motion to Intervene. Decision No. R12-0017-I granted Noble leave to intervene by permission. Noble is an intervenor and a party in this proceeding.

15. On November 14, 2011, Western Resource Advocates (WRA) timely filed its Petition for Leave to Intervene. Decision No. R11-1376-I granted WRA leave to intervene by permission. WRA is an intervenor and a party in this proceeding.

16. On November 15, 2011, Ms. Leslie Glustrom filed her Petition to Intervene and Request for Hearing.<sup>5</sup> Decision No. R12-0017-I granted Ms. Glustrom leave to intervene by permission. Ms. Glustrom is an intervenor and a party in this proceeding.

17. Boulder, CEC, CF&I, CHEN, CIEA, Climax, EnCana,<sup>6</sup> GEO, Glustrom, Interwest, Noble, OCC, Staff, and WRA, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties.

18. On November 29, 2011, by operation of rule, the Commission deemed the Application complete within the meaning of § 40-6-109.5, C.R.S. On December 21, 2011, by Decision No. R11-1376-I and pursuant to § 40-6-109.5(1), C.R.S., the time within which the Commission should issue a decision in this matter was extended to and including June 26, 2012. On May 14, 2012, by Decision No. R12-0510-I and pursuant to § 40-6-109.5(4), C.R.S., and

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<sup>5</sup> On November 15, 2011, Ms. Leslie Glustrom filed a Motion Requesting Acceptance of Late Filed Petition to Intervene. On January 10, 2012, by Decision No. R12-0017-I, this motion was granted.

<sup>6</sup> Unless the context indicates otherwise, in this Decision, EnCana and Noble, collectively, are the Colorado Gas Producers.



without objection from Applicant, the time within which the Commission should issue a decision in this matter was extended to and including September 24, 2012.

19. On December 12, 2011, by Decision No. C11-1336, we referred this matter to an Administrative Law Judge (ALJ).

20. On August 7, 2012, by Decision No. C12-0913-I, we determined that we would issue an Initial Commission Decision in this matter.

## **II. EVIDENTIARY RECORD**

21. During the course of this proceeding, the ALJ held a prehearing conference, heard oral argument, and issued Orders that, among other things, scheduled the evidentiary hearing in this matter and established, and modified, a procedural schedule.<sup>7</sup>

22. At the time and place scheduled, the ALJ called the evidentiary hearing to order on March 22, 2012. The Parties were present, were represented, and participated.

23. The evidentiary record consists of testimony and exhibits from the hearing on the Application. In this proceeding, there is no information that is claimed to be confidential. A transcript of each day of hearing has been filed in this docket.<sup>8</sup>

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<sup>7</sup> Decisions No. R11-1376-I, No. R12-0017-I, No. R12-0182-I, and No. R12-0300-I.

<sup>8</sup> In this Decision, citation to the page and line numbers of the transcripts of the evidentiary hearing is: date at page:line. For example, citation to page 100 at line 10 of the March 22, 2012 transcript is: March 22 tr. at 100:10. The same page and line number convention is used when citing to Hearing Exhibits.



24. During the three-day evidentiary hearing, the ALJ heard the testimony of 12 witnesses. *Public Service* presented three witnesses: Messrs. Nicholas Detmer,<sup>9</sup> Kurtis J. Haeger,<sup>10</sup> and Steve Mudd.<sup>11</sup> *Boulder* presented one witness: Mr. Jonathan B. Koehn.<sup>12</sup> *CHEN* presented two witnesses: Messrs. John Covert<sup>13</sup> and Warren L. Wendling.<sup>14</sup> *Colorado Gas Producers* presented one witness: Mr. Robert H. Weinstein.<sup>15</sup> *Interwest* presented one

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<sup>9</sup> Mr. Detmer is Manager of Commercial Operations and is employed by Xcel Energy Services, Inc., which is an affiliate of Applicant. Mr. Detmer's direct testimony is Hearing Exhibit No. 4. His oral testimony is found in the March 23 tr. at 67:1-79:8.

<sup>10</sup> Mr. Haeger is Managing Director of Wholesale Planning and is employed by Xcel Energy Services, Inc., which is an affiliate of Applicant. Mr. Haeger's direct testimony and exhibits are Hearing Exhibit No. 1, his supplemental direct testimony and exhibits are Hearing Exhibit No. 2, and his rebuttal testimony and exhibits are Hearing Exhibit No. 3. His oral testimony is found in the March 22 tr. at 10:6-220:22, the March 23 tr. at 4:19-65:18, and the March 23 tr. at 246:17-247:4.

Exhibit KJH-3 appended to Mr. Haeger's direct testimony (Hearing Exhibit No. 1) was revised in Exhibit KJH-3 (revised), which is appended to Mr. Haeger's supplemental direct testimony (Hearing Exhibit No. 2). Exhibit KJH-4 appended to Mr. Haeger's direct testimony (Hearing Exhibit No. 1) was revised in Exhibit KJH-4 (revised), which is appended to Mr. Haeger's supplemental direct testimony (Hearing Exhibit No. 2).

Exhibit KJH-3 (revised) appended to Mr. Haeger's supplemental direct testimony (Hearing Exhibit No. 2) was replaced by Exhibit KJH-7, which is appended to Mr. Haeger's rebuttal testimony (Hearing Exhibit No. 3). Exhibit KJH-4 (revised) appended to Mr. Haeger's supplemental direct testimony (Hearing Exhibit No. 2) was replaced by Exhibit KJH-8, which is appended to Mr. Haeger's rebuttal testimony (Hearing Exhibit No. 3). Exhibit KJH-5 appended to Mr. Haeger's supplemental direct testimony (Hearing Exhibit No. 2) was replaced by Exhibit KJH-9, which is appended to Mr. Haeger's rebuttal testimony (Hearing Exhibit No. 3). Exhibit KJH-6 appended to Mr. Haeger's supplemental direct testimony (Hearing Exhibit No. 2) was replaced by Exhibit KJH-10, which is appended to Mr. Haeger's rebuttal testimony (Hearing Exhibit No. 3).

Exhibit KJH-9 appended to Mr. Haeger's rebuttal testimony (Hearing Exhibit No. 3) was revised, updated, and replaced by Hearing Exhibit No. 25.

*The information contained in the following documents is the information on which Public Service relies:* Exhibits KJH-1 and KJH-2, which are appended to Hearing Exhibit No. 1; Exhibits KJH-7, KJH-8, and KJH-10, which are appended to Hearing Exhibit No. 2; and Hearing Exhibit No. 25.

<sup>11</sup> Mr. Mudd is Product Portfolio Manager and is employed by Xcel Energy Services, Inc., which is an affiliate of Applicant. Mr. Mudd's direct testimony and exhibits are Hearing Exhibit No. 5, and his rebuttal testimony and exhibits are Hearing Exhibit No. 6. His oral testimony is found in the March 23 tr. at 79:1-246:14 and the April 3 tr. at 7:14-61:11.

<sup>12</sup> Mr. Koehn is the Regional Sustainability Coordinator for the City of Boulder. Mr. Koehn's answer testimony is Hearing Exhibit No. 12. His oral testimony is found in the April 3 tr. at 158:23-182:7.

<sup>13</sup> Mr. Covert is the Executive Director of CHEN. Mr. Covert's answer testimony and exhibits are Hearing Exhibit No. 9. His oral testimony is found in the April 3 tr. at 95:12-109:6.

<sup>14</sup> Mr. Wendling is a Professional Engineer and an independent engineering consultant; CHEN retained his professional services in this proceeding. Mr. Wendling's answer testimony and exhibits are Hearing Exhibit No. 10. His oral testimony is found in the April 3 tr. at 109:16-112:11.

<sup>15</sup> Mr. Weinstein is an attorney and the principal in Robert Weinstein Consulting; Colorado Gas Producers retained his professional services in this proceeding. Mr. Weinstein's answer testimony is Hearing Exhibit No. 13. His oral testimony is found in the April 3 tr. at 121:5-158:11.



witness: Mr. Craig Cox.<sup>16</sup> OCC presented one witness: Dr. P.B. Schechter.<sup>17</sup> Staff presented two witnesses: Messrs. Eugene L. Camp<sup>18</sup> and William J. Dalton.<sup>19</sup> WRA presented one witness: Ms. Gwendolyn Farnsworth.<sup>20</sup>

25. Including written testimonies, 30 documents were marked for identification and were offered into evidence. Of these, Hearing Exhibits No. 1 through No. 17 and No. 19 through No. 30 were admitted into evidence.<sup>21</sup>

26. At the conclusion of the hearing, the ALJ closed the evidentiary record in this proceeding.

27. Each of the following filed a Statement of Position (SOP): Applicant; Boulder; CF&I and Climax;<sup>22</sup> CHEN; Colorado Gas Producers; GEO;<sup>23</sup> Ms. Glustrom; Interwest; OCC; Staff; and WRA. No response to the SOPs was permitted.

### **III. BURDEN OF PROOF AND RELATED PRINCIPLES**

28. Public Service requests that the Commission authorize a Windsource Standard Service and authorize a Windsource LTC program.

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<sup>16</sup> Mr. Cox is the Executive Director of Interwest. Mr. Cox's answer testimony and exhibits are Hearing Exhibit No. 11. His oral testimony is found in the April 3 tr. at 113:2-120:4.

<sup>17</sup> Dr. Schechter is a rate analyst employed by the OCC. Dr. Schechter's answer testimony and exhibits are Hearing Exhibit No. 14. His oral testimony is found in the April 3 tr. at 182:17-236:24.

<sup>18</sup> Mr. Camp is the Chief of the Energy Section and is employed by the Commission. Mr. Camp's answer testimony and exhibits are Hearing Exhibit No. 15. His oral testimony is found in the April 3 tr. at 237:10-295:10.

<sup>19</sup> Mr. Dalton is a Professional Engineer and is employed by the Commission. Mr. Dalton's answer testimony and exhibits are Hearing Exhibit No. 16. His oral testimony is found in the April 3 tr. at 295:17-345:17.

<sup>20</sup> Ms. Farnsworth is a Senior Energy Policy Advisory employed by WRA. Ms. Farnsworth's answer testimony and exhibits are Hearing Exhibit No. 7. Her oral testimony is found in the April 3 tr. at 62:23-95:1.

<sup>21</sup> Exhibit No. 18 was marked for identification and withdrawn.

<sup>22</sup> These intervenors filed a joint SOP.

<sup>23</sup> GEO filed a Motion for One-Day Extension of Time to File Statement of Position. GEO's Statement of Position (SOP) accompanied that motion. The GEO motion states good cause and is unopposed. We find that granting the GEO motion will not prejudice any party. We will grant the GEO motion and will accept, and will consider, the late-filed GEO SOP.



29. As the party seeking Commission authorization, Applicant bears the burden of proof with respect to the relief sought; the burden of proof is preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1500.<sup>24</sup> The evidence must be “substantial evidence,” which the Colorado Supreme Court has described as

such relevant evidence as a reasonable person’s mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.

*City of Boulder v. Colorado Public Utilities Commission*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Public Utilities Commission*, 949 P.2d 577, 585 (Colo. 1997)). The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party has met the preponderance of the evidence burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

30. If an intervenor advocates that the Commission adopt its position (for example, if an intervenor requests that a condition be placed on the authority granted), that intervenor must meet the same preponderance of the evidence burden of proof with respect to its advocated position.

31. Each of the Applicant’s requests is a matter of the public interest. The Commission has an independent duty to determine matters that are within the public interest. *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984). As a result, the Commission is not required to reach the same conclusions based on the evidence, or to draw the

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<sup>24</sup> This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723 (CCR).



same inferences from the evidence, as those reached, or drawn, by the parties. In addition, the Commission is not bound by the proposals made by, or the advocacy of, the parties.

32. The Commission reaches its decisions independently. Irrespective of the Parties' positions and advocacy, the Commission may grant or deny the relief sought -- and, if relief is granted, may establish conditions that the Commission deems necessary to assure that the final result is just, is reasonable, and is in the public interest -- provided the evidentiary record supports the result and provided the reasons for the choices made are stated.

#### **IV. DISCUSSION**

33. There are findings of fact throughout the Decision.

34. The record establishes, and we find, that we have jurisdiction over the subject matter of this proceeding.

35. The record establishes, and we find, that we have jurisdiction over the Parties to this proceeding.

##### **A. Parties.**

36. Applicant Public Service is a public utility that, as pertinent here, owns and operates facilities, and enters into Power Purchase Agreements, used to provide electric service to its retail ratepayers in Colorado and electric power to its wholesale customers. As a public utility, Public Service has a certificated service territory in Colorado. The Commission regulates Public Service's retail electric service, including the Windsource program.

37. Intervenor Boulder is a home rule city created pursuant to Article XX of the Colorado Constitution and the Boulder Home Rule Charter. Boulder receives electric service from Applicant. Boulder residents and businesses receive electric service from Applicant, and Boulder residents and businesses are Windsource subscribers.



38. Intervenor CEC is an unincorporated association of corporations that are duly authorized to conduct business in Colorado and of institutions of higher education. All CEC members operate facilities in Colorado and purchase electricity and related energy services as retail ratepayers of Applicant. CEC members are large consumers of electricity.<sup>25</sup>

39. Intervenor CF&I operates a steel manufacturing and fabrication plant and related facilities in Pueblo, Colorado. CF&I receives electric service from Applicant and is Public Service's largest retail electric ratepayer.

40. Intervenor CHEN is a non-profit organization that promotes rural economic interests through community-based energy development. Some members of CHEN receive electric service from Applicant; of those, some are Windsource subscribers.

41. Intervenor CIEA is a trade association of independent power producer companies and other entities. CIEA's members operate in, or may seek to operate in, Colorado.

42. Intervenor Climax operates the Climax and Henderson molybdenum mines and related facilities near Leadville and Empire, Colorado. Climax receives electric service from Applicant and is Public Service's second-largest retail electric ratepayer

43. Intervenor EnCana is a large natural gas company. EnCana has significant gas plays, resources, and sales of natural gas in Colorado.

44. Intervenor GEO is a Colorado state office established pursuant to § 24-38.5-101(1), C.R.S. (2011). Its charge is as set out in § 24-38.5-102, C.R.S. (2011).

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<sup>25</sup> CEC's membership has changed over time, and may continue to change, with the addition or subtraction of members generally and depending on a particular member's interest in a given proceeding.

In this proceeding, these entities comprise CEC: industrial customers (*i.e.*, Air Liquide, Ball Corp., Lockheed Martin Corporation, Metals Management, Miller, Coors, Suncor Energy (U.S.A.) Inc., and Western Metals Recycling); commercial customers (*i.e.*, Denver Metro Building Owners and Managers Association); and universities (*i.e.*, Johnson and Wales University and the University of Denver).



45. Intervenor Glustrom is an individual who is a Colorado resident and retail ratepayer of Applicant. She is, and has been for some time, a Windsource subscriber.

46. Intervenor Interwest is a Colorado-based trade association that represents renewable energy companies that seek, or that may seek, to provide Public Service with generation from renewable sources.

47. Intervenor Noble is an independent energy company with operations that include exploration for, development of, and production of natural gas in the United States. Noble has significant gas plays, resources, and sales of natural gas in Colorado.

48. Intervenor OCC is a Colorado state agency established pursuant to § 40-6.5-102, C.R.S. Its charge is as set out in § 40-6.5-104, C.R.S.

49. Intervenor Staff is litigation Staff of the Commission as identified in the Rule 4 CCR 723-1-1007(a) notices filed in this docket.

50. Intervenor WRA is a regional environmental law and policy center that serves the states within the interior western United States. It has its headquarters in Colorado and has members who live in Colorado and are retail ratepayers of Public Service.

**B. The RES, RECs, the RESA, and the ECA.**

51. In 2004, Colorado voters passed Amendment 37. As pertinent here, that amendment established a Renewable Energy Standard (RES), codified at § 40-2-124, C.R.S. (2005), for investor-owned electric utilities (*i.e.*, Public Service).<sup>26</sup> The RES mandated that Public Service generate, or cause to be generated, electricity from eligible energy resources (*i.e.*, renewable energy resources) in specified minimum amounts. Section 40-2-124(1)(c)(II), C.R.S.

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<sup>26</sup> This docket pertains to Public Service. Consequently, although the referenced statutes and rules apply to electric utilities in addition to Public Service, the remainder of this Decision refers only to Public Service.



(2005), required that a specified percentage of the generation from eligible energy resources be generated using solar electric generation technologies.

52. In 2007, House Bill 07-1281 was enacted. As pertinent here, that legislation amended § 40-2-124(1)(c)(I), C.R.S., to increase the amount of renewable energy that Public Service must acquire. The 2007 amendment specified that Public Service must generate, or cause to be generated, electricity from eligible energy resources in the following minimum amounts: (a) in the period 2008 through 2010, 5 percent of its retail electricity sales; (b) in the period 2011 through 2014, 10 percent of its retail electricity sales; (c) in the period 2015 through 2019, 15 percent of its retail electricity sales; and (d) in the years 2020 and beyond, 20 percent of its retail electricity sales. Section 40-2-124(1)(c)(II), C.R.S. (2007), continued the mandate that a specified percentage of the generation from eligible energy resources must be generated using solar electric generation technologies.

53. In 2010, House Bill 10-1001 was enacted. As pertinent here, that legislation amended § 40-2-124(1)(c)(I), C.R.S., to increase the amount of renewable energy that Public Service must acquire. The 2010 amendment specified that Public Service must generate, or cause to be generated, electricity from eligible energy resources in the following minimum amounts: (a) in the period 2011 through 2014, 12 percent of its retail electricity sales; (b) in the period 2015 through 2019, 20 percent of its retail electricity sales; and (c) in the years 2020 and beyond, 30 percent of its retail electricity sales.



54. House Bill 10-1001 removed the mandate for generation using solar electric generation technologies. Section 40-2-124(1)(c), C.R.S., now requires a specified percentage of distributed renewable electric generation (DG).<sup>27</sup> This is the current Colorado RES.<sup>28</sup>

55. Public Service demonstrates compliance with the RES using Renewable Energy Credits (RECs).<sup>29</sup> Colorado is a compliance market for RECs. One REC is created for each mega-watt hour (MWh) of electric energy generated from a renewable energy resource.

56. Based on the structure of the RES in effect through 2010, Public Service held these types of RECs: Renewable Energy Credits (RECs), Solar Renewable Energy Credits (S-RECs), and Solar On-Site Renewable Energy Credits (SO-RECs).<sup>30</sup>

57. Based on the structure of the RES now in effect, Public Service holds RECs generated by both DG and Non-DG renewable resources.<sup>31</sup> The types of RECs are: Non-DG, Retail DG, and Wholesale DG. Hearing Exhibit No. 16 at Exhibit WJD-11 contains estimations of the totals of each of these types of RECs in Public Service's REC inventory.<sup>32</sup>

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<sup>27</sup> This mandate includes more types of eligible energy generation technologies than did the solar electric generation technologies mandate.

<sup>28</sup> The rules governing the RES are found in the Rules Regulating Electric Utilities, Part 3 of 4 CCR 723, at Rules 4 CCR 723-3-3650 through 723-3-3668.

<sup>29</sup> Rule 4 CCR 723-3-3652(t) defines a REC as "a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of electric energy generated from a renewable energy resource."

<sup>30</sup> SO-RECs and S-RECs were subsets of the REC category.

<sup>31</sup> The Company's current REC inventory includes RECs once called REC, S-REC, and SO-REC.

<sup>32</sup> If the Application is granted, the Non-DG RECs may decrease because a sizeable portion of the Limon II-created RECs could be removed from that category, beginning in 2013 when Limon II goes on-line. If the Application is granted, the number of Non-DG RECs shown in Exhibit WJD-11 to Hearing Exhibit No. 16 and the number of Non-Distributive Actual/Planned RECs shown in Exhibit WJD-12 to Hearing Exhibit No. 16 will be overstated; the level of the overstatement is unknown.



58. At present, Public Service meets its Non-DG RES requirements principally through new and existing renewable energy purchase agreements and Commission-approved purchase power agreements (PPAs).

59. To verify RES compliance and to assure that each REC is retired (that is, used to meet a RES) only once, electronic tracking systems have been developed. The tracking systems assign a unique serial number to each MWh generated by a renewable energy generation resource (*i.e.*, to each REC); they also track REC attributes such as generation date, type of renewable generation facility (*e.g.*, wind, biomass, solar), and project location.

60. As described by the National Renewable Energy Laboratory (NREL):

In compliance markets, tracking systems are used by both the obligated utility and by the public utility commissions (PUCs) that oversee compliance. Utilities use the systems to manage their REC portfolios, transfer RECs to others, and ultimately to demonstrate compliance with the [RES] by transferring RECs into retirement accounts. RECs deposited into retirement accounts can no longer be traded. PUCs use retirement accounts to verify the number of RECs a utility is using to comply with [RES] requirements. Tracking systems are also used in voluntary markets, though their use is not as predominate as in compliance markets. The Green-e Energy certification program, a leading certifier and auditor of RECs in the voluntary market, allows green power suppliers to use tracking systems to simplify some parts of the Green-e audit process. The use of tracking systems to meet Green-e Energy requirements has increased in the past few years.

*Status and Trends in U.S. Compliance and Voluntary Renewable Energy Certificate Markets (2010 Data)*, NREL/TP-6A20-52925 (Hearing Exhibit No. 11 at Exhibit B) at 8. The Western Renewable Energy Generation Information System is the tracking system that serves the western states, including Colorado.

61. The RECs generated by Public Service's renewable resources (including Limon II energy, as discussed below) are funded entirely by Public Service's ratepayers.



62. Public Service has sufficient RECs to meet its RES obligations as specified in § 40-2-124(1)(c)(I), C.R.S., well past 2020. Hearing Exhibit No. 16 at Exhibit WJD-11 and Exhibit WJD-12; Decision No. C11-1291, Docket No. 11A-689E ¶ 14.<sup>33</sup>

63. Public Service recovers most of the costs of its renewable energy and fuel purchases through a combination of the Renewable Energy Standard Adjustment (RESA) rate rider mechanism and the Electric Commodity Adjustment (ECA) rate rider mechanism. Essentially, this combination of mechanisms allows Public Service to pass those costs, with certain adjustments, directly to retail ratepayers. Because these mechanisms are used to true-up revenues with actual expenses, Public Service is made whole over time.

64. RESA funds are used to pay the incremental difference in the costs of renewable energy resources as compared to the cost of non-renewable generation. At present, Public Service's RESA rate rider is a 2 percent surcharge on ratepayers' total electric bills;<sup>34</sup> this is the maximum level allowed pursuant to § 40-2-124(1)(g)(I)(A), C.R.S.

65. The Commission reviews the RESA account balance in the context of Public Service's RES Compliance Plan filings and annual RES compliance reports. As of Year End 2011, the RESA account had a negative balance of \$ 51.37 million (Hearing Exhibit No. 16 at Exhibit WJD-6), on which Public Service earns a return equal to its after-tax weighted average cost of capital.<sup>35</sup> Public Service projects that, assuming the continued implementation of a 2 percent RESA rate rider, the RESA account balance will become positive in 2017 without the addition of any REC margins after 2012.

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<sup>33</sup> This Decision was issued November 29, 2011 in Docket No. 11A-689E, *In the Matter of the Application of Public Service Company of Colorado for Approval of 200 MW Wind Power Purchase Agreement*.

<sup>34</sup> This is a tariffed rate.

<sup>35</sup> At present, Public Service's after-tax weighted average cost of capital is 7.74 percent.



66. Rule 4 CCR 723-3-3659(n) permits Public Service to sell RECs at any time, provided the Company retires a sufficient number of RECs to comply with the RES. Public Service has opted to sell its excess RECs. We have approved a margin-sharing mechanism for REC sales.<sup>36</sup> The mechanism shares the margins earned from REC sales between Public Service and its ratepayers. By Decision No. C12-0640,<sup>37</sup> we established the sharing percentages to take effect in 2012.<sup>38</sup> The ratepayer share of the margins earned from the REC sales is credited to the RESA account.

67. The ECA is calculated quarterly. In the simplest terms, the Company uses forecasts and modeling to make its most-informed forecast of what its fuel costs<sup>39</sup> will be in the coming quarter, and it submits these predictions quarterly to the Commission in order to update its ECA. Necessarily, the predictions are inexact. As a result, there is a high likelihood that, depending on the difference between the forecasted fuel prices and the actual fuel prices, Public Service will over-collect or under-collect through the ECA rate rider. This difference, if any, is incorporated as an offset (in the case of over-collection) or an increase (in the case of under-collection) to the next quarter's ECA rate rider.

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<sup>36</sup> The Decisions that created the mechanism are Decision No. C12-0081, issued on January 27, 2012 in Docket No. 11A-510E, *In the Matter of the Application of Public Service Company of Colorado for an Order Approving Regulatory Treatment of Margins Earned from Certain Renewable Energy Credits and Energy Transactions and Petition for Declaratory Order Clarifying the Meaning of the Phrase "Transactions Executed" as that Phrase is Used in the Settlement Agreement Approved in Docket No. 09A-602E*, and Decisions No. R11-0380, issued on April 7, 2011, and No. C11-0559, issued on May 24, 2011, in Docket No. 10A-542E, *In the Matter of the Application of Public Service Company of Colorado for an Order Approving Regulatory Treatment of Margins Earned from Certain REC Transactions*.

<sup>37</sup> Decision No. C12-0640 was issued on June 14, 2012 in Docket No. 11AL-947E, *In the Matter of Advice Letter No. 1597-Electric Filed by Public Service Company of Colorado to Revise its Colorado PUC No. 7-Electric Tariff to Implement a General Rate Schedule Adjustment and Other Changes Effective December 23, 2011*.

<sup>38</sup> Beginning in 2012, the Gen Book trading margins will be shared 90-10, with ratepayers receiving 90 percent and Public Service retaining 10 percent; and the Prop Book trading margins will be shared 10-90, with ratepayers receiving 10 percent and Public Service retaining 90 percent.

<sup>39</sup> The ECA recovers the cost of all fuels (*e.g.*, coal, renewables, natural gas) used to generate electricity. The fuel costs that are the most relevant, and potentially most volatile, are the costs (principally the commodity price) for the natural gas used to generate electricity.



## C. History of the Windsource Program.

### 1. Original Windsource Program.

68. On February 21, 1997, by Decision No. C97-0203 issued in Docket No. 96A-401E,<sup>40</sup> the Commission approved a stipulation and created the Windsource program.

69. Public Service sought to gain experience with the operation and economics of then-new wind generation and with market demand for a voluntary premium-priced service with environmental benefits. The goal of the original Windsource program was to collect funds through voluntary subscriptions paid by retail ratepayers to support the development, in Colorado, of a wind generation project of approximately 10 MW. If Public Service wished to expand the Windsource-funded wind generation project beyond 10 MW or wished to develop other wind projects, that expansion or addition would be accomplished in accordance with the then-existing Integrated Resource Planning Rules.<sup>41</sup> The approved stipulation also established reporting obligations for the Company.<sup>42</sup>

70. Retail ratepayers entered into subscription agreements to purchase wind resources in 100 kilowatt-hour (kWh) blocks; the ratepayer chose the number of blocks to purchase, up to a maximum of the ratepayer's total firm electric usage. The price for each 100 kWh block was

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<sup>40</sup> This Docket was *In the Matter of the Application of Public Service Company of Colorado for Authority to Implement a Renewable Energy Service Adjustment*.

<sup>41</sup> The Integrated Resource Planning Rules were in effect from 1993 to December 2002. These rules were found in Part 21 of 4 CCR 723 and were amended over time.

The Least-Cost Resource Planning Rules, found in Rules 4 CCR 723-3-3600 through 723-3-3615, replaced the Integrated Resource Planning Rules. The Least-Cost Resource Planning Rules were amended over time and were in effect until September 28, 2007.

The Electric Resource Planning Rules, Rules 4 CCR 723-3-3600 through 723-3-3619, replaced the Least-Cost Resource Planning Rules. The Electric Resource Planning Rules became effective on September 28, 2007. They are now in effect and have been amended over time.

<sup>42</sup> In addition to annual reporting obligations, Public Service was to file a report with the Commission: (a) if the Company planned to expand the wind generation project beyond 20 MW; (b) if the Company planned to terminate the Windsource program; or (c) at the third anniversary of the Windsource program. This report was to provide the specific information described in Decision No. C97-0203.



\$ 2.50 (or \$ 0.025 per kWh) and was a tariff rate. This price (the Windsource premium) was a value to which the stipulating parties in Docket No. 96A-401E agreed and was not based on concepts normally used to develop regulated rates. Decision No. C97-0203 at p. 3. Windsource subscribers paid their full tariff rate for electric usage and paid the incremental \$ 2.50 for each subscribed Windsource 100 kWh block.

71. Residential ratepayers and nonresidential ratepayers on Rate Schedule C contracted to participate in the program for a minimum of 12 consecutive months and then continued month-to-month until their program participation ended. All other nonresidential ratepayers contracted to participate in the program for a minimum of three consecutive years and then continued month-to-month until their program participation ended.

72. The original Windsource program was offered at Public Service shareholder risk. The revenues and expenses of the Windsource program were excluded from the ECA rate ride (and other rate riders) and from the Company's earnings test calculation.

73. As part of the stipulation approved by Decision No. C97-0203, Public Service agreed to involve community-based organizations, environmental organizations, and local governments in the marketing and sales promotion activities for products sold through the Windsource (or the Wind Energy Service) rate rider. To accomplish this, Public Service agreed to convene, at least quarterly, an advisory committee comprised of parties to the stipulation and other interested entities.

74. In 2005 and 2006, the Commission approved modifications to the original Windsource program.



## 2. Current Windsource Program.

75. The Windsource program was over-subscribed, and there was a waiting list of Company ratepayers that wished to participate in the program. To address this situation, Public Service filed an application in 2008 in which the Company sought approval of a redesigned Windsource program that would allow program expansion to meet ratepayer demand for more renewable energy.<sup>43</sup> In addition, in light of the passage of Amendment 37 and the creation of the RES, Public Service sought authorization to change the Windsource program to merge the then-separate Windsource program with the Company's system renewable resource portfolios.

76. Public Service asserted that changing the Windsource program would eliminate the Windsource waiting list; would allow the Company to acquire more renewable resources than it could acquire if it relied on only the RESA limited to the 2 percent retail rate impact limit contained in § 40-2-124(1)(g)(I)(A), C.R.S.; and would allow the Company to acquire additional renewable resources in a more cost-effective manner. Decision No. R09-0117 (Hearing Exhibit No. 16 at Exhibit WJD-2) at ¶ 12.<sup>44</sup>

77. Decision No. R09-0117 approved a stipulation that created the current Windsource program.

78. The current Windsource program is an optional product; is offered to all Public Service retail ratepayers; and is described in the Company's Fifth Revised Sheet No. 91,

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<sup>43</sup> That application commenced Docket No. 08A-260E, *In the Matter of the Application of Public Service Company of Colorado for an Order Approving Revisions to the Company's Windsource Program* (2008 Windsource Docket).

<sup>44</sup> Decision No. R09-0117 was issued on February 5, 2009 in the 2008 Windsource docket, Docket No. 08A-206E. On February 25, 2009, that Decision became the Decision of the Commission by operation of law.



Colo. PUC No. 7 Electric.<sup>45</sup> The current Windsource program requires a contract with the same minimum contract periods as the original program (*i.e.*, one year for residential ratepayers and for nonresidential ratepayers on Rate Schedule C and three years for all other nonresidential ratepayers); with the expiration of the contract term, the subscriber continues on Windsource service month-to-month until program participation ends.

79. A Windsource subscriber can contract for Windsource service (in 100 kWh blocks) up to the subscriber's total firm electric load, minus the RES requirement for the period. Public Service reserves the right to limit Windsource program subscriptions if the subscriptions put at risk the Company's ability to meet the RES.

80. The current Windsource rate is cost-based and is established using the method contained in, and proposed by the parties to, the stipulation approved by Decision No. R09-0117.<sup>46</sup> The current rate is \$ 2.1588 per 100 kWh block (or \$ 0.021588 per kWh) and is a tariffed rate.

81. The Windsource rate is updated annually as part of Public Service's RES Compliance Plan filing and takes effect on January 1 of each year.<sup>47</sup> As with the original Windsource program, a current Windsource subscriber pays her/his full tariff rate for electric usage and pays the Windsource premium for each subscribed 100 kWh block.

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<sup>45</sup> This tariff is found in Hearing Exhibit No. 5 at Exhibit SM-1. This document is a red-lined (or legislative drafting formatted) version of the current tariff. One can read the existing Windsource tariff by disregarding the red-lining and the proposed language that is in capital letters.

<sup>46</sup> The method is based on a forward-looking five-year view of the costs of additional renewable energy resources in the Company's renewable energy portfolio (*e.g.*, new wind resources and new solar resources). This was a change from the original wind-only Windsource program created in 1997.

<sup>47</sup> In its 2012-13 RES Compliance Plan filing in Docket No. 11A-418E, *In the Matter of the Application of Public Service Company of Colorado for Approval of its 2012 Renewable Energy Standard Compliance Plan*, Public Service proposes to maintain the Windsource premium at the current level of \$ 2.1588 per 100 kWh block.



82. Collected Windsource premiums, net of the Windsource administrative costs, are credited to the RESA account. This treatment is consistent with Rule 4 CCR 723-3-3659(n), which provides that proceeds from the sales of RECs are to be credited to the account associated with the RESA. The Windsource premiums are credited to the RESA deferred account to provide the Company with funds for the acquisition of additional renewable resources. If the RESA deferred account balance is negative, the Windsource premiums reduce that negative balance. If the RESA deferred account balance is positive, the Windsource premiums add to that positive balance.

83. The RECs associated with the Windsource energy are retired on behalf of the Windsource subscriber and are not available to Public Service for compliance with the RES. The types of RECs that are retired are consistent with the mix of resources in Public Service's renewable resource portfolio. RECs retired on behalf of Windsource subscribers, therefore, are not exclusively generated by wind resources.

84. RECs can be Green-e Energy certified. Under Green-e Energy Rules, this is the vintage standard: "[v]oluntary RECs sold in a given year can only be Green-e Energy certified if the renewable energy with which they are associated is generated in the calendar the product is sold, the first three months of the following calendar year, or the last six months of the prior calendar year." Hearing Exhibit No. 16 at Exhibit WJD-18. Under Green-e Energy Rules, if an electric utility ratepayer subscribes to an eligible program for 100 percent of the ratepayer's firm electric load, the utility is entitled, first, to retire RECs associated with that ratepayer's load to meet a state RES and, second, to retire the remaining RECs on behalf of the ratepayer.<sup>48</sup>

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<sup>48</sup> In this situation, the ratepayer is entitled to claim Green-e Energy certification for its entire firm electric load (*i.e.*, powered 100 percent by renewable energy).



85. The RECs retired on behalf of Windsource subscribers are Green-e Energy certified. In setting the current Windsource rate, Public Service accounts for the fact that a portion of the 100 percent Windsource subscriber's RECs will be used to comply with the RES by reducing the estimated incremental cost of new renewable energy by the percentage of the RECs that would be used for RES compliance. Hearing Exhibit No. 5 at 15:12-21; April 3 tr. at 32:11-33:18.

86. Leadership in Energy and Environmental Design (LEED) certification does not require that the RECs used for LEED certification meet the Green-e Energy certification standards. Hearing Exhibit No. 16 at Exhibit WJD-3. Thus, as to RECs purchased for LEED certification, the Green-e Energy vintage standard does not apply.

87. The Windsource program has been, and at present is, a voluntary program that permits Public Service retail ratepayers to purchase additional quantities of RECs with the purpose of encouraging the acquisition, deployment, and use of renewable energy resources beyond the RES or beyond Public Service's renewable energy portfolio, or both.<sup>49</sup>

88. In the period 2008 to 2011, Public Service data show that Windsource sales (stated in kWh) declined approximately 2 percent. The data show, however, that overall Windsource sales (stated in kWh) were relatively constant in 2010 and 2011. Hearing Exhibit No. 7 at Exhibit GF-4.

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<sup>49</sup> This is often referred to as additionality. The stipulation approved by Decision No. R09-0117 in the 2008 Windsource Docket includes additionality. *Id.* at Settlement Term No. 2; *see* Decision No. R09-0117 at ¶ 31.



89. In the period 2008 to 2011, Public Service data show that Windsource sales to residential subscribers declined overall by approximately 21 percent (from 175,516,962 kWh to 139,065,162 kWh). Hearing Exhibit No. 7 at Exhibit GF-4.

90. In the period 2008 to 2011, the Company's data show that Windsource sales to nonresidential subscribers increased overall by approximately 66 percent (from 50,021,268 kWh to 73,130,282 kWh). Hearing Exhibit No. 7 at Exhibit GF-4. Sales to nonresidential subscribers now account for approximately 37 percent of total Windsource sales. These data include all nonresidential subscribers, irrespective of size or tariff class.

91. With respect to the Windsource program's residential subscriber base, Public Service data show that, in the period 2008 to 2011, Windsource lost almost 9,000 residential subscribers (an average annual loss of 5.6 percent) due to the subscribers' moving from their premises. Hearing Exhibit No. 7 at Exhibit GF-3 at 1 and 3. The Company's data also show that, in the same period, Windsource lost approximately 2,560 residential subscribers (an average annual loss of 1.6 percent) as a result of those subscribers' voluntary cancellation of participation. *Id.*

92. In Public Service's opinion, the decline in residential ratepayer participation in the Windsource program is driven primarily by the decline in economic conditions. In addition, Public Service sees greater reliance on solar (*e.g.*, solar panels) as a contributing factor to the decline in residential ratepayer participation. Finally, Public Service believes that the formula for determining the Windsource premium may be too complicated and, thus, may be off-putting to residential ratepayers who may be interested in subscribing to Windsource.

93. In Public Service's opinion, the increase in nonresidential ratepayer participation in Windsource is driven by three factors: first, Federal Executive Order No. 13514, which



requires federal agencies to purchase a percentage of their electric load from renewable energy sources; second, the ratepayer's ability to obtain LEED certification points by purchasing Windsource; and, third, the ratepayer's desire to demonstrate its renewable leadership.<sup>50</sup> The evidentiary record does not contain information about, or quantification of, these factors beyond Public Service's stated opinion.

94. The decline in residential ratepayer participation in the Windsource program and the increase in nonresidential ratepayer participation in Windsource generally parallels the national trend in the purchase of renewable energy. *Status and Trends in U.S. Compliance and Voluntary Renewable Energy Certificate Markets (2010 Data)*, NREL/TP-6A20-52925 (Hearing Exhibit No. 11 at Exhibit B).

95. In 2011, the Windsource program collected \$ 11.59 million from subscribers. Hearing Exhibit No. 16 at Exhibit WJD-16. Public Service data show that, in 2011, the Windsource program contributed \$ 4.55 million (or paid \$ 4.55 million) to the RESA deferred account. Hearing Exhibit No. 7 at Exhibit GF-2 at 2.

**D. Limon II and Decision No. C11-1336.**

96. This proceeding has its origins in Docket No. 11A-689E, *In the Matter of the Application of Public Service Company of Colorado for Approval of 200 MW Wind Power Purchase Agreement* (Limon II Docket). In that proceeding, by Decision No. C11-1291 issued November 29, 2011 (Limon II Decision), we approved a 25-year Wind Energy Purchase

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<sup>50</sup> The record is unclear as to reasons why the second factor may be important to (*e.g.*, what benefit may be derived by) a Windsource subscriber. In addition, the record is not clear with respect to the overlap, if any, between the second and third factors.



Agreement between Limon Wind II, LLC,<sup>51</sup> and Public Service (Limon II PPA or Limon II contract).

97. The Limon II PPA is for the entire energy output of the Limon II 200 MW wind facility.

98. As relevant here, in the Limon II Decision, we stated:

Public Service and other parties provide significant evidence demonstrating the benefits to consumers from the proposed Limon II contract. Staff, Climax/CF&I, and the Gas Producers also raise a number of valid concerns about the additional risks to consumers. Notably, Public Service has adequate generation capacity for the near term and it does not estimate that it will need additional RECs to meet statutory Renewable Energy Standard (RES) requirements until 2029. *Public Service nonetheless argues that the contract will likely lower costs to consumers, primarily by reducing natural gas fuel costs.* As discussed in detail below, we find that, on balance, the benefits of the contract outweigh the potential risks, and the public interest is best served by approving the contract.

*A significant benefit of the Limon II contract is its value as a hedge against natural gas price volatility.* The Limon II wind purchase agreement is essentially a long-term fixed-price energy contract, similar to a long-term natural gas supply contract. For example, the Limon II contract provides benefits that are similar to the long-term gas supply contract between Public Service and Anadarko Energy Services approved in the recent Clean Air Clean Jobs Act (CACJA) proceeding in Docket No. 10M-245E. However, unlike the ten-year Anadarko contract, *the Limon II wind contract provides an opportunity to lock in a price for 25 years.*

Furthermore, in the CACJA proceeding, we directed Public Service to retire coal-fired generation facilities, to convert generation facilities to burn natural gas instead of coal, and to build a new gas generation facility. *This increased reliance on gas increases the ratepayer exposure to gas price spikes.*

The Anadarko contract price also falls between the base case gas price and the low case gas price (Hrg. Exh. 9 [in Docket No. 11A-689E]). Since the low case represents the approximate “break-even gas price” for the Limon II contract, where the contract would likely provide neither a net benefit nor a net cost to the Company’s customers, the Limon II contract is as good or better than the Anadarko contract pricing for more than double the contract term.

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<sup>51</sup> Limon II, LLC, is a subsidiary of NextEra Energy Resources, LLC (NextEra). In the record and in this Decision, Limon II, LLC, is referred to as NextEra.



*We also find that it is more likely than not that the Limon II contract will reduce costs to consumers in the long run. The low 25-year fixed cost of the Limon II contract coupled with the Company's conservative modeling assumptions suggest savings to ratepayers over the life of the contract.*

Overall, we conclude that Public Service adequately answered the concerns of Staff, the Gas Producers, and Climax/CF&I about the Company's analysis of the net benefits from the Limon II contract. For instance, the Company included a certain level of curtailment payments in its analysis and asserts that, *because Public Service will pay NextEra only for energy produced, NextEra rather than customers are at risk from any overstatement of the capacity factor for the Limon II facility.*

We further recognize the concerns that the forecasted gas prices are too high, as all pricing scenarios begin with 2011 and 2012 gas prices that are above current gas prices. However, *we find that Public Service adequately explains why the current low prices do not invalidate its forecast.* In addition, although gas prices appear to have fallen since Public Service filed the Application, *we find the Limon II contract will still provide net benefits to consumers even if gas prices continue to be lower than the base case or low gas case.* For example, if Public Service had included a gas price volatility mitigation adder in its analysis, the nominal value over the life of the contract is likely to be \$75 to \$100 million. *Compared to financial hedging alternatives, the hedging value associated with the Limon II contract alone provides a significant offset to other potential risks.* We decline to adopt any of the proposed conditions offered by Staff and CF&I/Climax as we find that their acceptance is not necessary for our approval of the Limon II contract. *Public Service shall, therefore, obtain cost recovery through a combination of the ECA and RESA as is typical for wind energy resources acquired since July 2, 2006.*

Finally, while we are cognizant that Public Service could possibly find a better deal on a renewable resource in the future, we find that low wind component prices, the Federal Production Tax Credits, and low interest rates will not likely coincide as they have today. Further, *we expect utilities to seek out the best deals for its ratepayers, and Public Service filed this expedited case to capture what it perceives to be an exceptional opportunity.* Public Service has significant experience in working with wind developers to integrate such resources into its system. We therefore also find it to be appropriate to afford the Company a degree of deference in this situation.

\* \* \*

We note that during the pendency of this docket, Public Service filed an application for approval of revisions to its Windsource program in Docket No. 11A-833E, proposing to use the economic wind energy produced by the Limon II wind facility to support its new Windsource product offerings. By



*approving the Limon II contract as a system resource, we intend for the maximum benefits to inure to the Company's general customer base.*

Decision No. C11-1291 at ¶¶ 14-21, 27 (footnotes omitted) (emphasis supplied).

99. As approved in the Limon II Docket, the Limon II PPA is a Public Service system resource. We noted that approximately \$ 100 million in savings at the natural gas price base case would result from the Limon II PPA.<sup>52</sup>

100. In the Limon II Docket, Public Service “advised the Commission that Public Service desires to use the Limon II wind energy as a foundation for new Windsource product offerings for our customers.” Hearing Exhibit No. 17 at 1. This led to some confusion about the scope of the Limon II Docket. To clarify the scope of that case, we determined “that the scope of [that docket was] limited to the consideration of the Limon II facility as a system resource, without regard to any potential future Windsource filing.” Decision No. C11-1008, issued September 16, 2011 in the Limon II Docket, Docket No. 11A-689E, at ¶ 11.

101. Public Service filed the Application now before us to seek authorization for the proposed new Windsource offerings raised in the Limon II Docket.

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<sup>52</sup> In the docket before us, however, the maximum retail savings at the natural gas price base case are \$ 83,462 million. Two factors account for the lower maximum Limon II-based retail savings at base case natural gas prices.

First, the savings estimated in the Limon II Docket were total savings. In the current docket, Public Service seeks to offer the Windsource LTC program only to its retail ratepayers. Thus, pursuant to Rule 4 CCR 723-3-3660(l), Public Service must perform a retail/wholesale allocation of the Limon II energy and the resulting RECs. In compliance with that rule, Hearing Exhibit No. 25 assumes that 9 percent of the Limon II production is allocated to wholesale customers. This lowers the \$ 100 million in estimated total savings from Limon II to \$ 91 million in estimated retail savings from Limon II.

Second, the estimated retail savings from Limon II at the base case natural gas prices are lower because smaller turbine blades are being installed on the Limon II project. As shown on Hearing Exhibit No. 25, substituting the smaller turbine blades results in an estimated annual Limon II production of 789 GWh (or 789,000 MWh); this is an annual decrease in estimated production of approximately 88 GWh (or 88,000 MWh) from the annual energy production figure in the Limon II Docket. Lower annual Limon II energy production results in lower retail savings.



102. When we referred the instant docket to an ALJ, we made clear the connection between the present docket and the Limon II Docket:

Given our direction in [the Limon II Decision at ¶ 27] that the Company's general customer base obtain the maximum benefits from the Limon II contract, we direct the ALJ to examine [a] whether the Company's proposed changes to Windsource will reduce the value of the Limon II PPA as a hedge against natural gas price volatility, [b] whether these proposed changes will better allow the Limon II PPA to reduce costs to consumers in the long run, and [c] whether the proposed changes ultimately provide the optimal benefit for all of the Company's customers.

Decision No. C11-1336 at ¶ 12.

**E. Relevant Statutory Provisions, Rules, and Decisions.**

103. Section 40-3-101, C.R.S., pertains to a regulated utility's charges and services. Section 40-3-101(1), C.R.S., requires that charges be just and reasonable. Section 40-3-101(2), C.R.S., requires that a regulated utility provide such service "as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall in all respects be adequate, efficient, just, and reasonable."

104. Section 40-3-106(1)(a), C.R.S., as relevant here, provides: "No public utility shall establish or maintain any unreasonable difference as to ... service, ... or in any other respect, ... between any class of service." That provision also prohibits, as to any service, granting "any preference or advantage to any corporation or person [and] subject[ing] any corporation or person to any prejudice or disadvantage."<sup>53</sup>

105. Section 40-3-103, C.R.S., as pertinent here, requires public utilities to file with the Commission, and to keep open for public inspection, all contracts "that in any manner affect or relate to rates, ... classifications, or service."

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<sup>53</sup> Section 40-3-106, C.R.S., contains exceptions that are not applicable in this case.



106. When we referred the instant docket to an ALJ, as discussed above, we gave guidance with respect to the additional issues that this case is to address. Decision No. C11-1336 at ¶ 12. We consider this guidance in arriving at our decision in this docket.

107. The Federal Trade Commission (FTC) has issued “Guides for the Use of Environmental Marketing Claims,” which are found at 16 *Code of Federal Regulations* (CFR) Part 260 (2012). The guides “apply to environmental claims included in labeling, advertising, promotional materials, and all other forms of marketing” (16 CFR § 260.2(a)) and require that

any party making an express or implied claim that presents an objective assertion about the environmental attribute of a product, package or service must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim.

Section 260.5 of 16 CFR. The guides contain both general principles (16 CFR § 260.6) and specific principles applicable to types of environmental claims (*id.* at § 260.7).

108. The FTC guides may apply to statements such as “powered 100 percent by renewable energy” or “product manufactured using 100 percent renewable energy” when the statements are used, for example, to promote a company or to advertise a product. The purchase and retirement of RECs on behalf of a specific ratepayer may be the type of substantiation required by 16 CFR § 260.5 (quoted above).<sup>54</sup>

## **V. WINDSOURCE STANDARD SERVICE**

### **A. Public Service’s Proposal.**

109. Under the proposed Windsorce Standard Service, all Public Service ratepayers, irrespective of electric energy usage or rate class, will be able to purchase the Windsorce

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<sup>54</sup> By including these observations, we make no findings with respect to either whether the FTC guides apply to statements such as “powered 100 percent by renewable energy” or whether RECs meet the FTC’s guidelines. We include this information as background for the concept of greening up, as used with respect to the Windsorce Standard Service and to the Windsorce Long-Term Contract program.



Standard Service in 100 kWh blocks. Participation in the Windsource Standard Service will not require a contract and can be terminated on 30 days' notice. All premiums paid under the Windsource Standard Service, less any administrative costs, will be credited to the RESA deferred account.

110. On behalf of ratepayers subscribing to Windsource Standard Service, Public Service will retire Non-DG RECs that are supplied from wind resources<sup>55</sup> and that are Green-e Energy certified. Public Service will retire those RECs on a first-in, first-out basis within the Green-e Energy vintage and facility guidelines. As under the current Windsource program, RECs retired through the Windsource Standard Service generally will not be available to the Company for its compliance with the RES; Public Service reserves the right to limit Windsource Standard Service subscriptions if the subscriptions put at risk the Company's ability to meet the RES. As under the current Windsource program and in accordance with Green-e Energy certification, the number of RECs retired for a 100 percent Windsource Standard Service subscriber will be based on the subscriber's annual kWh usage minus the RES requirement for the applicable period.

111. The price for the proposed Windsource Standard Service will be \$ 1 per 100 kWh block (\$ 0.01/kWh).<sup>56</sup> Public Service proposed this price after considering 2009 national market

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<sup>55</sup> This is a change from the current Windsource program. The RECs in the current program are supplied from all resources in the Company's renewable resource portfolio.

<sup>56</sup> This is less than one-half of the current Windsource price of \$ 2.1588 per 100 kWh block (or \$ 0.021588 per kWh).



pricing data for utility-offered green pricing programs<sup>57</sup> and 2009 national pricing data for REC-based products.<sup>58</sup> Public Service chose the \$ 1 per 100 kWh block premium because, in its view, the premium is cost-competitive and is likely to stimulate growth in, and to help increase residential ratepayer participation in, the Windsource program. In addition, Public Service sees the market-based \$ 1 per 100 kWh block premium as a simpler and more transparent pricing method than the current cost-based method used to calculate the Windsource premium.

112. The premium for the Windsource Standard Service will be a tariffed rate, and Public Service plans to have it in effect as soon as possible after approval of the Application. Because it is a tariffed service, Public Service will file an advice letter to change the Windsource Standard Service premium, the block size, or any term or condition of service. Public Service proposes to file an advice letter to change the Windsource Standard Service, including the Windsource premium, whenever the Company determines that market conditions dictate a change.

113. At present, Public Service's policy is to cancel automatically a Windsource subscriber's participation in the Windsource program when the subscriber moves, even if the

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<sup>57</sup> The 2009 national data showed that the prices (*i.e.*, premiums) for green power offerings to residential customers fell within this range: between \$ 0.017/kWh below the utility's standard electric rates (low end) and \$ 0.10/kWh above the utility's standard electric rates (high end). The average premium was \$ 0.0175/kWh, and the median premium was \$ 0.0150/kWh. Hearing Exhibit No. 5 at 13:6-13, quoting a National Renewable Energy Laboratory report entitled *Green Power Marketing in the United States: A Status Report (2009 Data)*. The cited report is not in the evidentiary record because no party offered a copy of the report.

Although Public Service witness Mudd provided the web address for the report, this was not sufficient to bring the report into the evidentiary record. In Decision No. R12-0017-I at ¶ 56, the ALJ advised the Parties that "any document on which a party wishes the Commission to rely must be in the evidentiary record. Referencing a document in testimony and providing a web address where the document may be found is not sufficient to bring the document into the evidentiary record."

<sup>58</sup> The 2009 national data showed that the retail prices (*i.e.*, premiums) for REC products offered to residential ratepayers and to small commercial ratepayers fell within this range: between \$ 0.01/kWh (low end) and \$ 0.025/kWh (high end). Hearing Exhibit No. 5 at 13:14-19, quoting a National Renewable Energy Laboratory report entitled *Green Power Marketing in the United States: A Status Report (2009 Data)*. For the reasons discussed in the previous footnote, the cited report is not in the evidentiary record.



subscriber moves to a location within the Company's service territory. For a Windsource subscriber who has moved to remain a Windsource subscriber, that person must subscribe from the new location. Public Service intends to retain this policy under the Windsource Standard Service.

114. Public Service asks for approval of both proposed Windsource programs. However, if we reject the Windsource Long-Term Contract program, however, Public Service asks us to approve the Windsource Standard Service.

115. If we approve the Windsource Standard Service and do not approve the Windsource Long-Term Contract program and assuming the Windsource Standard Service subscription level equals the 2011 Windsource program subscription level, the Windsource Standard Service will contribute approximately \$ 2,100,000 into the RESA deferred account. This would be a reduction of \$ 2,452,000 from the Windsource program's 2011 contribution made to the RESA deferred account. Hearing Exhibit No. 7 at 12:17-23.

**B. Positions of the Parties.**

116. The position taken by each party is discussed below.

**1. Public Service.**

117. The policy underlying the current cost-based Windsource premium is: Public Service will use the Windsource premiums to buy additional renewable resources for generation; thus, the Windsource premium must be cost-based to reflect the incremental cost of the next renewable resource that Public Service will acquire. In Public Service's opinion, the current Windsource premium prices the program out of the REC market in Colorado.

118. Public Service argues that market-driven pricing of the Windsource premium will create an environment in which the Company can compete with non-regulated companies to sell



its surplus RECs to its ratepayers. By reducing the premium to make its Windsource Standard Service cost-competitive and by removing the requirement for a contract, Public Service asserts, retail ratepayers will find the Windsource Standard Service to be an attractive source for purchasing RECs; as a result, Public Service should sell more RECs; and, with the increased sale of Windsource RECs, Public Service should be able to pay down the RESA deferred account.

119. Public Service generally takes the position that there is sufficient information in the evidentiary record for the Commission to find that the Windsource Standard Service premium of \$ 1 per 100 kWh block (\$ 0.01/kWh) is within the range of market prices for utility green pricing programs. Public Service acknowledges that the market price for such services and RECs will change over time, and it would like the ability to respond to market conditions by changing the price. It states its belief that, as with any other tariff offering, the appropriate procedure for changing the Windsource Standard Service price is to file an advice letter on 30 days' notice and to present evidence in support of the proposed price change if the proposed tariff's effective date is suspended.

120. Public Service notes that, with the exception of WRA,<sup>59</sup> no party filed testimony objecting to the Windsource Standard Service.

## **2. Boulder.**

121. Boulder has two concerns about the Windsource Standard Service: the change in pricing method and the change to wind-only.

122. While it supports the decrease in the Windsource Standard Service premium, Boulder asserts that the Company has not presented sufficient data for the Commission and the

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<sup>59</sup> As discussed below, WRA opposes approving the Windsource Standard Service unless the Commission approves the Windsource Long-Term Contract program.



Parties to analyze the proposed Windsource Standard Service premium of \$ 1 per 100 kWh block. As a result, Boulder does not know whether the proposed premium is an accurate reflection of the true cost of wind on the Company's system.

123. Boulder seeks greater pricing transparency and assurance that the Windsource Standard Service premium is set at the correct price point. To accomplish these goals, Boulder recommends that the Commission: (a) require the Company *either* to calculate, and to disclose, the cost to produce wind energy on its system *or* to use standard indices for wind-only RECs to set the price of a Windsource 100 kWh block; and (b) irrespective of the method used to set the price, require the Company to update annually the Windsource Standard Service price.

124. Boulder makes the general observations that larger scale wind facilities produce both energy and RECs at lower cost than other renewable generation facilities and that the primary reason for the decision to purchase Windsource RECs through the RESA was to support other types of renewable generation through the economies of scale obtained from the large wind projects that are supported by the RESA. Thus, Boulder argues, if the Windsource Standard Service is limited to wind energy, the higher costs of other types of renewables should be stripped out, resulting in a lower Windsource Standard Service premium.

125. Boulder states that renewable programs have more credibility with ratepayers when one can explain to them how the prices are determined. Thus, Boulder prefers that prices for renewable energy resources accurately reflect the resources' true cost and be transparent. To achieve greater transparency, Boulder suggests two alternative approaches: (a) a cost-based approach in which Public Service develops, and discloses, a new formula that calculates the actual cost to produce wind energy on its system and then uses that formula to determine the



Windsor Standard Service price;<sup>60</sup> and (b) consistent with Staff's recommendations, a market-based approach in which Public Service uses existing standard index or indices for wind-only RECs to set the price of a Windsor 100 kWh block.

126. In Boulder's view, it is not appropriate for Public Service to choose, as it did in this docket, one price point for a wind-only REC within the range of prices for which all REC products (irrespective of the renewable generation source) sell. Boulder argues that the NREL report on 2009 REC-based product pricing, on which Public Service relies, included retail green power pricing products with a range of renewable resources rather than only wind resources. In Boulder's opinion, this resulted in a range of REC product prices that is higher than the range of prices for wind-only REC products. Boulder also notes that, given the fact that the NREL report on which Public Service relied is not in the record, why and how NREL selected the specific comparative REC products is not known.

127. Irrespective of the pricing method selected, Boulder recommends that the Windsor Standard Service premium be revised on an annual basis. Boulder argues that annual revision may be done without further proceedings if the Commission orders one of Boulder's alternative methods for determining the Windsor Standard Service premium.

128. Boulder also has a concern that the change to wind-only may hurt the development of other renewable energy sources in Colorado. Noting that, since its inception, the appeal of the Windsor program has been that the premiums paid by subscribers went directly to funding new renewable resources, Boulder asserts that the Windsor Standard Service may shift the focus from building more renewable energy facilities in Colorado to simply selling

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<sup>60</sup> In Boulder's opinion, the current method used to calculate the Windsor premium lacks the requisite transparency.



RECs. Boulder recommends that the Commission carefully consider whether approving the Windsource Standard Service may signal, or may result in, such a change in policy.

129. If the proposed Windsource Standard Service is approved, Boulder urges the Commission to create a stakeholder group that will review Public Service's current programs and that will consider new programs to continue to support the development of a wide variety of renewable energy products and programs.

### **3. CF&I and Climax.**

130. Climax and CF&I take no position on the Application with respect to the Windsource Standard Service. If the Application is granted, in whole or in part, they request that the Commission adopt certain principles. As pertinent to the Windsource Standard Service, Climax and CF&I recommend that the Commission affirm the strictly voluntary nature of the Windsource Standard Service. In their opinion, this is the continuation of the policy that has existed since the beginning of the Windsource program.

### **4. CHEN.**

131. CHEN takes no explicit position on the Windsource Standard Service. CHEN is concerned, however, that the proposed Windsource Standard Service will be wind-only and that removing support for solar energy will have a negative impact on existing solar projects and on the creation of additional solar projects. It has the same concerns with respect to all renewable resources other than wind.

132. CHEN would prefer to see the development of renewable projects that provide economic benefit to,<sup>61</sup> and that are located in, local communities, particularly local rural

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<sup>61</sup> This includes the opportunity for ratepayers to own the project.



communities and low-income communities. In addition, CHEN would prefer to see the development of products that meet the needs of all ratepayers with respect to renewable energy. Finally, CHEN takes the position that Public Service should use the Windsource Standard Service premiums to fund directly community-based renewable projects and should not use the premiums simply to purchase RECs.

133. To assure that Public Service's ratepayers will have the opportunity to continue to support renewable programs in addition to wind, CHEN recommends that, if we approve the wind-only Windsource Standard Service, we order Public Service to reconvene the Renewable Energy Advisory Group<sup>62</sup> and direct that group to discuss the development of a Solar Source program, a Community-Source program, and other programs and offerings for other types of renewable resources. CHEN is willing to defer consideration of its issues to the Renewable Energy Advisory Group notwithstanding CHEN's concern that the group may do no more than revisit concepts and issues already considered. *See, e.g.*, Hearing Exhibit No. 10 at Exhibit WLW-1 (Renewable Energy Advisory Group Report submitted October 1, 2009 in the 2008 Windsource Docket<sup>63</sup> at Attachment A (description of renewable energy product concepts developed by the Renewable Energy Advisory Group)).

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<sup>62</sup> CHEN and other intervenors recommended that we refer issues to a stakeholder group, and Public Service and other intervenors spoke in terms of a reconvened Renewable Energy Advisory Group. We find that the concepts are the same. Thus, for consistency, in this Decision and unless the context indicates otherwise, reference in this Decision to the Renewable Energy Advisory Group is to the reconvened Renewable Energy Advisory Group or stakeholder group. The recommendation to reconvene the Renewable Energy Advisory Group is discussed below.

<sup>63</sup> The stipulation approved in that docket required the formation of an advisory group and required Public Service to file the final report on the group's discussions.



134. In addition, as a principal and stated goal of the Windsource Standard Service, CHEN recommends that subscribers should not subsidize non-subscribers and that non-subscribers should not subsidize subscribers.

135. CF&I and Climax express no opinion with respect to whether the issues raised by CHEN should be referred to a Renewable Energy Advisory Group. CF&I and Climax oppose the Commission's granting either any relief, including some of CHEN's proposals, that expands or extends the Windsource Standard Service beyond the proposal in the Application or any relief that expands or extends the scope of the docket as established in the Notice of Application Filed. They recommend that, for the sake of clarity, if the Application is approved, the decision expressly state that the Commission is not approving proposals that are beyond the relief sought in the Application or that are beyond the scope of the notice issued in this docket.

#### **5. Colorado Gas Producers.**

136. Colorado Gas Producers do not oppose the Application. Colorado Gas Producers made no recommendations with respect to the Windsource Standard Program.

#### **6. GEO.**

137. GEO supports the Windsource Standard Service and recommends Commission approval. GEO notes that the Windsource Standard Service contains a number of benefits for participants, notably retirement of RECs at a lower, market-based price and elimination of the contract requirement that is replaced by opting-in and opting-out on 30 days' notice. In GEO's opinion, lowering the cost and increasing the flexibility of participation will retain and possibly increase voluntary participation in Windsource and will provide a high level of benefit for Public Service's ratepayers.



## 7. Glustrom.

138. Ms. Glustrom generally supports the Company's proposal to reduce the price of the Windsource Standard Service to \$ 1 per 100 kWh block. In her opinion, however, this proposal does not go far enough. She recommends that Windsource Standard Service subscribers receive an automatic refund of the ECA costs to reflect the fuel cost savings that accompany their choice to support the development of wind-generated electricity.

139. Ms. Glustrom states that, in the past, Windsource subscribers received a credit for fossil fuel costs charged under the ECA and that this allowed residential ratepayers to have a small hedge against rising fossil fuel costs.<sup>64</sup> She is concerned that, with a fixed Windsource Standard Service premium as proposed by the Company and irrespective of how high fossil fuel prices may go, residential subscribers will not receive a reduced premium unless Public Service files an advice letter to change the price of the Windsource Standard Service.

140. Ms. Glustrom favors an automatic refund process. Because the ECA contains a number of adjustments to electric rates in addition to fuel costs and to make the rebate easier to explain to ratepayers, Ms. Glustrom recommends that a Windsource Standard Service subscriber receive a rebate of about 10 percent of the ECA for each subscriber 100 kWh block of Windsource Standard Service.<sup>65</sup>

141. Ms. Glustrom argues that her 10 percent proposal is a small rebate and likely would be less than the fossil fuel cost savings that come from wind generation; that the

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<sup>64</sup> As shown in Hearing Exhibit No. 14 at Exhibit PBS-3, for example, from November 2005 through April 2006, Windsource subscribers received credits toward the ECA rate rider and the Air Quality Improvement Rider. Taken together, these credits exceeded the Windsource premium that the subscribers paid.

<sup>65</sup> The ECA changes quarterly, and the ECA factors for billing purposes differ for each rate class. In general, at the time of the hearing, a 10 percent refund of the ECA would have fallen within the range of approximately \$ 0.0025 to \$ 0.0033 per kWh.



calculation would be straightforward; and that, with adoption of the proposal, the cost of Windsource Standard Service would decrease as fossil fuel prices rise, thus providing some fuel cost hedging benefits for residential subscribers.

142. Ms. Glustrom concludes that a fuel cost rebate for Windsource Standard Service subscribers is an important concept, one that the Renewable Energy Advisory Group should discuss. She recommends that the Commission include a fossil fuel credit for Standard Windsource Service subscribers as a topic for the Renewable Energy Advisory Group to discuss.

### **8. Interwest.**

143. Interwest states that the proposed Windsource Standard Service will benefit ratepayers who participate and those who do not. As examples of benefits to all Public Service ratepayers, Interwest states that wind and other renewable energy sources reduce emissions and reduce risks (*e.g.*, litigation costs) to Public Service that are related to environmental compliance, which risks could increase costs to all Public Service electricity ratepayers. In addition, Interwest states that a diverse mix of utility-scale renewable energy resources, including solar energy, can help to reduce or to delay transmission investments due to peak hour energy contributions and offsetting integration patterns. The record is unclear with respect to the way(s) in which these benefits are related to the purchase of RECs from the Company's inventory, which is the focus of this proceeding.



## 9. Staff.

144. Staff supports approval of the Windsource Standard Service, with one recommended condition: authorize Public Service to adjust the Windsource Standard Service price by +/-20 percent based on ratepayer response.<sup>66</sup>

145. Staff's recommendation rests on its concern that the proposed premium of \$ 1 per 100 kWh block (\$0.01/kWh) may not be market-based and, if it is, may not be the correct market-based price. In his testimony, Staff witness Dalton suggested that the market price for the Windsource Standard Service could be determined based on "an annual average of voluntary REC prices as published by national or regional REC trading organizations, brokerages, or government agencies" (Hearing Exhibit No. 16 at 24:13-14). He stated that using published data would simplify the determination of the premium, would increase pricing transparency, and would reflect more accurately the market price for voluntary RECs. In response, Public Service witness Mudd testified that there is no single index that reflects the retail market for voluntary green power.<sup>67</sup> Hearing Exhibit No. 6 at 5:1-3.

146. Staff notes that the proposed premium generated significant testimony and Public Service must test the Windsource Standard Service price to see how the Public Service ratepayers respond. Staff argues that, if we approve the +/- 20 percent pricing condition, Public Service would have the flexibility to respond to the market. If Windsource

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<sup>66</sup> Staff's recommendation was presented for the first time in its statement of position. As a result, no other party has had no opportunity to respond directly.

<sup>67</sup> This response also addresses Boulder's suggested market-based approach in which Public Service uses existing standard index or indices for wind-only RECs to set the price of a Windsource 100 kWh block.



Standard Service sales do not increase significantly in the first year, Public Service could reduce the Windsource Standard Service price by any amount to the floor of \$ 0.80 per 100 kWh block (\$0.008/kWh). If Windsource Standard Service sales increase significantly in the first year, Public Service could increase the Windsource Standard Service price by any amount to the ceiling of \$ 1.20 per 100 kWh block (\$0.012/kWh).

147. Under Staff's proposal, the +/-20 percent range would be stated in the tariff; and Public Service could change the Windsource Standard Service price within the range without notice to the Commission or to subscribers. If Public Service wished to charge a rate that fell outside the range, Public Service would file an advice letter and proposed tariff sheets.

#### **10. WRA.**

148. WRA recommends, first and foremost, that the Commission take steps to assure that contribution levels to the Windsource program remain stable overall, with the potential for future program growth to meet ratepayer demand. For this reason, WRA recommends that the Commission either approve the Application *in toto* (i.e., both the Windsource Standard Service and the Windsource Long-Term Contract program) or deny the Application *in toto*.

149. If only a portion of the Application is approved, WRA argues, the Windsource benefits to Colorado's public health and environment that result from supporting renewable energy resource acquisitions that displace fossil fuel generation would be reduced; and the overall contribution from Windsource to the RESA deferred account would be reduced. Specifically, if we approve the Windsource Standard Service and do not approve the Windsource Long-Term Contract program, WRA warns that there is a great risk that reducing the price of the Windsource Standard Service by over 50 percent will result in greatly reduced revenue into the Windsource program and, thus, into the RESA deferred account.



150. If we approve the Application *in toto*, WRA makes the following recommendations with respect to the approved Windsource Standard Service.

151. First, WRA states that large-scale wind facilities produce energy at a lower cost than other renewable energy sources. Thus, if the Windsource Standard Service is wind energy only, WRA agrees with Public Service that a lower price is appropriate.

152. Second, the Commission should require Public Service to include in its annual Renewable Energy Standard Compliance Report filed pursuant to Rule 4 CCR 723-3-3662(a) these items: (a) an explanation of the market-based price of the Windsource Standard Service; (b) a summary and analysis of the Windsource Standard Service pricing and subscription trends, including the results for a new solar product if one is offered; (c) a statement of Public Service's progress on improving the call center script to reduce residential ratepayer attrition from the Windsource Standard Service; and (d) a narrative on ratepayer feedback and the results of any market research. WRA believes that the information is important to monitor the effect and success of the Windsource Standard Service; to understand, and to respond to, market demand; and to inform the development of a solar product. WRA argues that this additional information is necessary to supplement current reporting requirements that do not sufficiently describe subscription trends across ratepayer classes and over time.

153. Third, although willing to accept a wind-only Windsource Standard Service (but only if the entire Application is approved), WRA is concerned about the exclusion of solar generation technologies from the Windsource Standard Service. To address this concern, WRA recommends that Public Service offer utility programs that provide willing subscribers the opportunity to support a variety of renewable energy resources. In support of this recommendation, WRA states: Colorado's excellent solar resources could, and should, be



developed more fully; solar is less than 1 percent of Public Service's resource mix and wind is over 10 percent; increasing solar resources would improve the diversity of Public Service's portfolio with a renewable energy resource whose generation profile is well-correlated to the Company's load curve; because solar generation technologies require a relatively high capital investment, support from a voluntary utility program will help to assure continued development of solar resources; and the Commission should adopt the solar generation product guidelines offered by WRA witness Farnsworth. WRA agrees that the Renewable Energy Advisory Group could discuss the recommended additional renewable resource programs.

154. Fourth and finally, WRA recommends that funds received from subscribers to the to-be-developed voluntary solar energy product should be segregated from the RESA account. WRA argues that small-scale, incremental solar development should be supported through a separate fund and that a separate solar-based fund would assure subscribers that they are supporting investment in renewable resources that are in addition to RES requirements.

155. Public Service opposes the idea of segregating from the RESA account the funds received from the to-be-developed voluntary solar energy product. Public Service points out that there is currently a significant negative balance in the RESA deferred account and that the public interest lies in continuing to use Windsource premiums to reduce that negative balance. Public Service states that the idea of segregating premiums from the RESA can be revisited in the future when the balance in the RESA deferred account is positive.

156. CF&I and Climax oppose any recommendation that seeks to expand or to extend the Windsource program beyond the Application or beyond the Notice of Application Filed issued in this docket. This includes approving, in this docket, either solar programs or segregation of solar REC funds from the RESA, or both. In CF&I and Climax's opinion, neither



of these issues is ripe for consideration in this docket and both should be deferred to a future proceeding, assuming they are properly raised in such a future proceeding. Because these issues were raised at hearing and are part of the evidentiary record, and for the sake of clarity, CF&I and Climax recommend that the decision in this case, if the Application is approved, state that neither of these proposals is approved.

**C. Discussion and Conclusions.**

157. For the reasons discussed below, we will deny the Application insofar as it seeks approval of reducing the Windsource Standard Service charge.

158. First, we find that Public Service failed to provide a sufficient evidentiary basis on which we can rely to approve the rate of \$ 1 per 100 kWh block (\$ 10 per MWh/REC). To determine what it asserts is a market rate, Public Service conducted limited national market research using secondary sources, which are not in the record, and provided neither Colorado-specific research nor Public Service ratepayer response research. The 2009-vintage price data on which Public Service relied is relatively old. In addition, although Public Service argues that \$ 1 per 100 kWh block is within the range of other comparable REC offerings, the evidence does not reveal whether the “comparable” green products that Public Service relies on are wind-only. Further, there is no information as to whether the \$ 1 per 100 kWh block price reflects the price that Public Service’s ratepayers are willing to pay for the retirement of already-generated RECs in the Company’s inventory. Put another way, the record contains no information on how much the Company’s ratepayers value the wind-generated RECs in Public Service’s inventory when greening up their electricity usage. Finally, the testimony indicated that customers have multiple alternatives for purchasing RECs, and lowering the price might not increase participation given the range of alternatives



159. Public Service concludes that the current Windsource rate is too high compared to other competing offers. The Company acknowledges, however, that the appropriateness of its proposed rate of \$ 1 per 100 KWh block will be determined on a market response basis. In its Statement of Position at 23, Public Service states that the “best test of whether we are setting the price right is whether we attract buyers”; that it would like the opportunity to lower the price if the RECs are not selling and/or to raise the price if it they are selling “like gangbusters”; and that, because the price is set forth “like any other tariff offering,” a change in the Windsource Standard Service rate would have to be accomplished on a 30 days’ notice advice letter tariff filing. This appears to be a slow and inefficient means to auction, by means of a rate based on changed market conditions, RECs to retail ratepayers.

160. In addition, we find that the recommendations of Staff and of WRA are not supported by the record. Although Staff’s recommendation that we approve a range of prices is likely an improvement over a series of advice letter filings intended to respond to changing market conditions, a range extending from \$ 0.80 per 100 kWh block to \$ 1.20 per 100 kWh block is as unsupported as the \$ 1 per 100 kWh block starting point. As to WRA’s recommendation that the price be established using published indices, there does not appear to be any index against which to benchmark a “market-based” retail price for wind-generated RECs. There is insufficient record support to adopt any cost-based proposed alternative.

161. Second, we find that Public Service provided no analysis of the potential impact of the proposed price reduction for RECs on the overall contributions from Windsource subscribers to the RESA deferred account. Public Service asks us to assume that a lower price will attract more buyers for RECs and will result in overall revenues that are equal to, or greater than, today’s REC sales under the current Windsource program. There is some risk in approving



a price reduction when the impacts are not well understood. We have recently taken several steps intended to reduce the deferred balance of the RESA. Without a better presentation of the likely impacts, we will not take an action that has the potential to upset the levels of contributions that can be counted on from Windsource subscribers.

162. Third, we find that the proposed Windsource Standard Service represents a significant change in the purpose of the Windsource program. The current Windsource program is intended to foster the development of additional renewable generation on the Company's system, and this purpose supports the current cost-based approach for setting the tariff rate for the service. The record in this case contains no information on whether Windsource contributions under the existing program have been responsible for adding renewable resources to the Company's system that would not have otherwise been developed. Nonetheless, the regulatory purpose of the existing Windsource program is clear, and, Public Service has not provided persuasive reasons for us to move away from the policy basis for the current Windsource program.

163. In short, Public Service did not meet its evidentiary burden in this proceeding and did not convince us, on policy grounds, that we should approve the Windsource Standard Service. We will deny that portion of the Application.

## **VI. WINDSOURCE LONG-TERM CONTRACT PROGRAM**

### **A. Public Service's Proposal.**

164. By this Application, Public Service seeks authorization to offer the Windsource LTC program. The Company describes the Windsource LTC program as a concept and states that, once the concept is approved, it will develop a standard Windsource LTC program contract and will submit it for review.



165. The following description of the Windsource LTC program is compiled from written and oral testimony. There is no one source, either a document or oral testimony, in the evidentiary record at which one can find a complete description of the proposed program.

166. Limon II is expected to generate 789,000 MWh/REC annually during the 25-year contract term. This is the total annual energy production, before the wholesale/retail allocation. When the wholesale/retail allocation is performed, the retail allocation of the Limon II annual production is approximately 718,000 MWh/REC (or 91 percent of 789,000 MWh/REC). Of this total retail allocation, 560,000 MWh/REC per year (or 78 percent of 718,000 MWh/REC) will be set aside for the Windsource LTC program. The remaining 158,000 MWh/REC per year (or 22 percent of 718,000 MWh/REC) will be retained as a Public Service system resource for the benefit of all retail ratepayers.<sup>68</sup>

167. The Windsource LTC program is a voluntary program under which Public Service proposes to sell Limon II RECs to its large electric customers that use a minimum of 120,000 kWh (or 120 MWh) of electricity per year.<sup>69</sup> Public Service will offer subscriptions to the Windsource LTC program in an initial offering. Participants will subscribe by signing

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<sup>68</sup> This analysis shows a percentage of Limon II MWh/RECs retained by the system that differs from the percentage in Hearing Exhibit No. 25 (natural gas price base case) and Hearing Exhibit No. 3 at Exhibit KJH-10 (low natural gas prices case). Those exhibits calculate retail savings (*i.e.*, savings for the retail ratepayers that are not participating in the Windsource LTC program) based on the system retaining 17 percent of the Limon II MWh/RECs. The 17 percent figure is assumed, but its derivation is not explained, on the exhibits.

As demonstrated by the analysis above, if the wholesale/retail allocation has been not done in the two referenced exhibits, the 17 percent figure is not accurate.

If one assumes that the wholesale/retail allocation has been done in the two referenced exhibits (that is, the Limon II annual production of 789,000 MWh/REC is the retail allocation), the 17 percent figure is not accurate. Assume the retail allocation of the Limon II annual production is 789,000 MWh/REC. Of this retail total, 560,000 MWh/REC per year (or 71 percent) will be set aside for the Windsource LTC program. The remaining 229,000 MWh/REC per year (or 29 percent) will be retained by the Company for the benefit of all retail ratepayers.

<sup>69</sup> A Windsource LTC program participant may aggregate purchases at multiple premises into a single program contract.



contracts with a minimum contract term of five years,<sup>70</sup> although longer contract terms (in 5-year increments up to 25 years) will be available.

168. Like the Windsource Standard Service, the Windsource LTC program requires subscribers to continue to pay full tariff rates for their electricity consumption. In addition, the Windsource LTC program subscribers will pay the ECA and other applicable rate riders. Participation in the program will not shield subscribers from adjustments to the tariffed rates (including rate riders) for electricity.

169. Public Service will use a standard-offer contract approved by the Commission. In rare cases (*e.g.*, governmental entities that may be restricted in accepting certain contractual obligations or that may need special terms and conditions such as governmental immunity provisions), it may be necessary to add special contract provisions so long as they are not material modifications of the contract; Public Service has done this type of non-material contract modification in the past. If a prospective Windsource LTC program participant seeks a provision that is a material modification of the Commission-approved contract, Public Service will reject that prospective participant or will seek Commission approval of the requested modification.

170. Public Service will open a reservation process that allocates the Windsource LTC program REC capacity as follows: (a) as soon as possible after the Company is comfortable that the Commission will approve the program, Public Service will open a three-month reservation period during which it will make the program known to eligible ratepayers; (b) during the reservation period, an interested ratepayer will submit a reservation form that states the number of RECs that the ratepayer wishes to purchase; a ratepayer can subscribe up to 100 percent of its

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<sup>70</sup> Windsource LTC program participants that sign five-year contracts will have the option to renew the contract at the end of the five-year term, but the pricing terms may be modified at renewal.



annual estimated usage minus the amount of renewable energy provided as part of the RES; (c) at the close of the reservation period, if the program is over-subscribed, Public Service will allocate the available RECs using the process described in Hearing Exhibit No. 5 at 27; and (d) at the close of the reservation period, if the program is not fully subscribed, Public Service will continue to accept reservations on a first-come, first-served basis until the end of 2012.

171. After the available RECs are allocated, Public Service will negotiate with each eligible ratepayer that receives an allocation of RECs. The reservation process is an indication of the ratepayer's interest and is not binding on the ratepayer. Thus, some ratepayers that receive an allocation of RECs may not sign a Windsource LTC program contract or may sign a contract for fewer RECs than allotted.

172. The record is unclear with respect to what happens to the unsubscribed RECs set aside for the Windsource LTC program in the event that: (a) the program is not fully subscribed at the end of 2012; or (b) ratepayers to which RECs were allocated do not subscribe to their allocated amount, either because they elect not to participate or because they subscribe to fewer RECs. The unsubscribed Windsource LTC program RECs may remain with the Public Service retail system, may be made available in future years to eligible ratepayers that are either new ratepayers or are on a waiting list, or may be made available in future years to Windsource LTC participants that re-subscribe at the end of the contract term.

173. The Windsource LTC program participant will provide security for its contract performance by one of two methods. The participant may provide a letter of credit, the amount of which is \$ 24 for each subscribed REC. The participant may use the cash reserve in its Reward Fund. The required Reward Fund cash reserve is \$ 24 for each subscribed REC. A



Windsor source LTC program participant may build up its Reward Fund cash reserve through its monthly payments of \$ 12 per REC.<sup>71</sup>

174. When a Windsor source LTC program participant has provided the required security of \$ 24 for each subscribed REC (either through a letter of credit or its Reward Fund cash reserve), the participant will be eligible to receive an annual reward in the form of a bill credit or a check.

175. Assuming no breach of the contract, the Windsor source LTC program participant's Reward Fund balance is refunded to the participant at the end of the contract term. Public Service pays no interest on the Reward Fund balance.

176. As demonstrated in Hearing Exhibit No. 24,<sup>72</sup> it is possible that a Windsor source LTC program participant may have a negative Reward Fund balance at the conclusion of the contract term.<sup>73</sup> A negative balance would mean that the Windsor source LTC program participant did not pay the full incremental cost of Limon II over system avoided costs, although it would have paid a portion of that cost difference.<sup>74</sup> Should this situation occur, Public Service will not seek to recover the negative balance from the Windsor source LTC program participant.

177. At the hearing, the issue of whether Windsor source LTC participants have audit rights arose. Public Service agreed to the following: (a) it will provide, at the end of year two, of year five, and of every subsequent five-year period, to participants and the Commission, an

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<sup>71</sup> This accumulation process is explained below.

<sup>72</sup> Like Hearing Exhibits No. 22 and No. 23 (discussed below), this exhibit is an illustrative example that uses hypothetical numbers from a hypothetical month. One reads Hearing Exhibit No. 24 in the same way as one reads Hearing Exhibit No. 22; this is described below.

<sup>73</sup> This would occur if natural gas prices remain very low for an extended period of time.

<sup>74</sup> If there were no Windsor source LTC program, Public Service's retail ratepayers would have borne the entire cost difference as Limon II wind energy displaced lower-cost natural gas-fired energy.



audit of all calculations made under the Windsource LTC program; (b) it will retain all the cost information and computer modeling runs used in the calculation of the REC prices and the Reward Fund balances and will make them available to an independent auditing firm for review; and (c) in the event the independent audit finds an error, Public Service will true-up all accounts to eliminate any errors. The cost of the independent audit will be included in the Windsource LTC program administrative expenses.

178. The Windsource LTC program contract is not transferable. Participants that move locations within Public Service's service territory remain program participants. If a Windsource LTC program participant moves to a location outside the Company's service territory, goes out of business, or terminates its program participation before the end of the contract term, that entity forfeits its accumulated Reward Fund balance and its right to any future Windsource LTC program benefits. Any Windsource LTC program participant that fails to perform under the contract will be excluded from participating in the Windsource LTC program and in the Windsource Standard Service (or any other available Windsource program) for a period of one year.

179. The maximum price for a Windsource LTC program REC (*i.e.*, Non-DG RECs from Limon II) will be \$ 12 per MWh/REC (\$ 0.012 per kWh). The actual price for the Windsource LTC program REC will be determined monthly by comparing the cost per MWh for energy from Limon II with the actual avoided energy cost saved by Public Service as a result of the Limon II generation.<sup>75</sup> The difference between the Limon II costs and the actual avoided energy costs may be positive or negative.

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<sup>75</sup> Hearing Exhibits No. 22, No. 23, and No. 24 illustrate how Public Service will determine the Windsource LTC program REC prices.



180. In each month Public Service will determine the actual energy costs avoided as a result of the operation of Limon II.<sup>76</sup> Public Service will determine the costs that it incurred during that month to accept the Limon II wind energy into its system. Those incurred costs include the contract price for wind energy from Limon II, any curtailment payments made to Limon II during the month,<sup>77</sup> the costs incurred by Public Service to integrate the wind energy into its system, and the costs incurred by Public Service to cycle coal plants when wind energy is supplied during low load periods.

181. This process of determining the actual cost of the REC requires data that are available and verifiable each month. To implement the Windsource LTC program on a monthly basis, Public Service needs the following data items: (a) the Limon II contract price and the actual wind production level for the month (available from the Limon II monthly invoice); (b) the cost of wind integration (obtained from a chart that results from the Wind Integration Study filed with the Commission); (c) the cost of coal cycling (obtained from a chart in the Coal Cycling Study filed with the Commission); (d) the actual cost of curtailed wind (available from the Limon II monthly invoice); (e) the monthly avoided cost calculated using Gentrader or other similar dispatch model (*i.e.*, the Federal Energy Regulatory Commission fuel clause protocol); (f) the actual monthly cost of natural gas (the average delivered cost of natural gas less firm demand charges); and (g) the actual Windsource LTC program administration costs. These monthly data will allow Public Service to calculate the cost of the Windsource LTC program

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<sup>76</sup> The computer simulations that Public Service will run to determine the avoided energy costs are the same simulations that it performs to comply with Federal Energy Regulatory Commission Fuel Cost Adjustment regulations.

<sup>77</sup> In this context, curtailment refers to the Company's refusal to take energy from Limon II when it is made available. Because the Limon II PPA is a take-or-pay contract, there is a charge for the refusal. The Limon II PPA, however, has curtailment allowances for Public Service. Thus, there may not be curtailment charges in every month. Public Service anticipates that the curtailment charges will be zero beginning in 2022. Hearing Exhibit No. 25 at lines 7 and 41 (Curtailment).



REC and to provide the monthly balance available in the Windsource LTC program participant's Reward Fund.

182. The wind integration costs and the coal cycling charges are estimated for the Public Service system and are taken from studies filed with the Commission. The studies used to determine the wind integration costs and the coal cycling charges shown in Hearing Exhibit No. 25 and Hearing Exhibit No. 3 at Exhibit KJH-10 are before the Commission in Docket No. 11A-869E.<sup>78</sup>

183. Hearing Exhibit No. 22 is an illustrative example that describes the accounting of costs associated with Limon II and the \$ 12 per REC premium paid by Windsource LTC program participants.<sup>79</sup> One purpose of the exhibit is to show how money flows to and from the accounts related to the ECA and the RESA rate riders, the premiums collected from Windsource LTC program participants, and the Windsource LTC program participants' Reward Fund. This exhibit assumes a month in which the natural gas prices are as predicted in Public Service's base case for natural gas prices.<sup>80</sup>

184. First, the incremental cost per MWh of the Limon II PPA is calculated by this process:<sup>81</sup> (a) Public Service's total cost to accept the energy from the Limon II PPA is determined; in the hypothetical month shown, that the cost is \$ 32.50 per MWh/REC;<sup>82</sup> (b) the

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<sup>78</sup> This docket is *In the Matter of the Application of Public Service Company of Colorado for Approval of its 2011 Electric Resource Plan* (Public Service 2011 ERP Docket).

<sup>79</sup> This exhibit reflects a hypothetical month. The hypothetical numbers shown on Hearing Exhibit No. 22 are not based on the numbers shown on Hearing Exhibit No. 25.

<sup>80</sup> The natural gas price base case forecast is shown in Hearing Exhibit No. 25 at lines 22 and 56 (average gas cost). This is the same base case forecast used in the Limon II Docket.

<sup>81</sup> This is shown on the left-hand side of Hearing Exhibit No. 22.

<sup>82</sup> This total consists of these cost elements: (a) Limon II contract cost for the month of \$ 27.50 per MWh; (b) a wind integration charge of \$ 3 per MWh; (c) a coal cycling charge of \$ 1 per MWh; and (d) a payment for curtailment of \$ 1 per MWh.



Public Service system avoided energy cost from the Limon II energy is determined using monthly after-the-fact computer simulations; in the hypothetical month shown, the avoided costs are \$ 25.50 per MWh/REC; and (c) the total Limon II PPA cost is compared to the system avoided energy costs from Limon II; in the hypothetical month shown, the incremental cost (over the savings) of the Limon II PPA is \$ 7 per REC.

185. Second, the Windsource LTC program REC price is calculated by adding together:<sup>83</sup> (a) the actual administrative costs per REC of the Windsource LTC program; in the hypothetical month shown, that cost is \$ 1 per REC; (b) a per REC contribution to the RESA determined by a formula that increases as gas prices increase; in the hypothetical month shown, that cost is \$ 3 per REC;<sup>84</sup> and (c) the incremental cost of the Limon II project for the month; as calculated above, in the hypothetical month shown, that cost is \$ 7 per REC and is a credit to the ECA. Adding these amounts together results in an \$ 11 REC price for the Windsource LTC program for the hypothetical month.

186. Third, the REC price for the Windsource LTC program (in the illustrative month, the price is \$ 11) is subtracted from the \$ 12 per REC Windsource LTC program premium paid by the Windsource LTC program participant. This results in the Windsource Adjustment. In the hypothetical month, the difference is \$ 1 per REC; this amount is credited to the program participant's Reward Fund.

187. Like Hearing Exhibit No. 22, Hearing Exhibit No. 23 is an illustrative example using hypothetical numbers and describes the accounting of costs associated with Limon II and

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<sup>83</sup> This is shown on the right-hand side of Hearing Exhibit No. 22.

<sup>84</sup> The per REC credit to the RESA is \$ 3 for 2013 and 2014. Beginning in 2015, the per REC RESA credit will vary with natural gas prices according to this formula:  $((\text{actual average natural gas cost}) - (\$ 5)) * 1.5) + \$ 3$ . This formula is based on the actual average cost of natural gas to Public Service, including both the commodity cost and the delivery cost. As natural gas prices rise, the RESA credit becomes larger.



the \$ 12 per REC premium paid by Windsource LTC program participants. Hearing Exhibit No. 23 assumes a month in which the natural gas prices are higher than predicted in the natural gas price base case (*i.e.*, there is a higher system avoided cost).

188. The only difference between Hearing Exhibit No. 23 and Hearing Exhibit No. 22 is the system avoided cost: in Hearing Exhibit No. 22, the avoided costs are \$ 32.50 per MWh/REC; in Hearing Exhibit No. 23, the avoided costs are \$ 37.50 per MWh/REC. This one change results in an incremental cost of Limon II of negative \$ 5 per REC (*i.e.*, the energy from Limon II is \$ 5 per REC less expensive than Public Service's average system cost).

189. The negative \$ 5 per REC is a charge to the ECA and is a credit to the Windsource Adjustment.<sup>85</sup> All retail ratepayers, including both Windsource LTC program participants and non-participants, pay the ECA rate rider on their bills. Hearing Exhibit No. 23 demonstrates that the \$ 5 per REC from Limon II is paid from ECA contributions.

190. The REC price for the Windsource LTC program is subtracted from the \$ 12 per REC Windsource LTC program premium paid by the Windsource LTC program participant. In the hypothetical month shown in Hearing Exhibit No. 23,<sup>86</sup> the difference is \$ 13 per REC.<sup>87</sup> This amount is greater than the \$ 12 per REC premium paid by the participant, is the net of the administrative costs and the credit to the RESA, and is credited to the program participant's Reward Fund.

191. As shown on Hearing Exhibit No. 25, if natural gas prices rise as forecasted in the natural gas price base case forecast used in the Limon II Docket and assuming the

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<sup>85</sup> This is on the left-hand side of the exhibit.

<sup>86</sup> This is on the right-hand side of the exhibit.

<sup>87</sup> This figure includes the \$ 5 per REC payment to the participant from the ECA.



Windsor LTC program full subscription of 560,000 RECs for 25 years, non-participating retail ratepayers will see net present value (NPV) savings of \$ 68.1 million *with* the Windsor LTC program and will see NPV savings of \$ 83.5 million *without* the Windsor LTC program.<sup>88</sup>

192. As shown on Hearing Exhibit No. 3 at Exhibit KJH-10, if natural gas prices are as forecasted in the low natural gas price case and assuming the Windsor LTC program full subscription of 560,000 RECs for 25 years, non-participating retail ratepayers will see NPV savings of \$ 33.9 million *with* the Windsor LTC program and additional NPV costs of \$ 4.7 million *without* the Windsor LTC program.<sup>89</sup>

193. Hearing Exhibit No. 3 at Exhibit No. 10 (low natural gas price forecast, includes commodity price and delivery), Hearing Exhibit No. 25 (base natural gas price forecast, includes commodity price and delivery), and Hearing Exhibit No. 26 (updated natural gas price forecast, includes commodity price only) are the natural gas price forecasts presented in this docket.<sup>90</sup> Each uses the Commission-approved four-source blend method to determine the commodity price. In its 2011 Electric Resource Planning (ERP) Docket, Public Service has presented more recent and updated natural gas price forecasts; those forecasts are lower than the forecasts in either Hearing Exhibit No. 3 at Exhibit No. 10 (low natural gas price forecast) or Hearing Exhibit No. 25 (base natural gas price forecast).

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<sup>88</sup> These numbers are based on 17 percent of the Limon II MWh/RECs being retained by the Company's system. For the reasons discussed above, this percentage is questionable.

<sup>89</sup> These numbers are based on 17 percent of the Limon II MWh/RECs being retained by the Company's system. For the reasons discussed above, this percentage is questionable at best.

<sup>90</sup> Because Hearing Exhibit No. 26 is commodity price only, it is not directly comparable to the other two natural gas price forecast exhibits.



194. There are approximately 16,000 Public Service retail ratepayers that annually consume at least 120 MWh and, thus, qualify for the Windsource LTC program. In developing the program, Public Service representatives spoke with approximately 12 of those eligible ratepayers to determine their interest in the Windsource LTC program concept. Of those 12, 6 eligible ratepayers expressed an interest in the program concept.

195. Neither CEC,<sup>91</sup> CF&I, nor Climax, all of which are or represent large Public Service ratepayers that are eligible for the program, presented testimony in support of the Windsource LTC program. In addition, none of these intervenors filed a statement of position supporting the Windsource LTC program.<sup>92</sup>

196. Xcel Energy, the parent company of Public Service, does not offer a Windsource LTC program-like service in any state in which it provides regulated electric service. Colorado is the first state in which an Xcel Energy regulated subsidiary has proposed such a program.

## **B. Positions of the Parties.**

197. The position of each party is discussed below.

### **1. Public Service.**

198. Public Service begins with the foundational proposition that one cannot know in advance whether the general body of ratepayers will receive greater benefits from the Limon II PPA as a system resource or from the Limon II PPA with the Windsource LTC program. This is due to the fact that how the Limon II PPA compares with the costs that are avoided depends

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<sup>91</sup> **Note 25** contains a list of the large ratepayers represented by CEC in this docket.

<sup>92</sup> CF&I and Climax filed a joint statement of position in which they took no position on the Application. CEC did not file a statement of position.



primarily on how the fixed price Limon II wind contract compares with variable natural gas prices.<sup>93</sup>

199. Despite this uncertainty, Public Service seeks authorization to offer the Windsource LTC program to its large nonresidential ratepayers because Public Service believes that this new, competitive REC product will prove to be attractive to its large nonresidential ratepayers; will encourage greater participation in Windsource by those ratepayers; and will address those ratepayers' desire to meet their environmental goals (*i.e.*, to green up) and to mitigate (*i.e.*, hedge against) potential future increases in electricity rates. Public Service believes that, as designed, the Windsource LTC program is as close as Public Service can get the program to meeting the Commission's goal of having Limon II provide an "optimal benefit for all of the Company's customers" (Decision No. C11-1336 at ¶ 12).

200. To address the customer demand for a product that provides an opportunity to green up, Public Service states that it will retire Windsource LTC program RECs on the participants' behalf and, generally speaking, those RECs will not be available for compliance with the RES. This will allow large ratepayers to green up their electricity consumption and, as a result, will permit the participants to advertise or to promote themselves as "X percent" green.

201. To address the customer demand for hedge value, Public Service states that, under the Windsource LTC program, the participants will assume most of the risk, and will reap most of the benefits, of Limon II's costs as compared to Public Service system generation costs. The Windsource LTC program participant, according to Public Service, receives hedge value against higher natural gas prices because the participant captures the difference between the cost of the

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<sup>93</sup> As gas prices rise, the Limon II contract becomes more attractive compared to alternatives. If gas prices are low, the Limon II contract is less attractive because it costs more than the alternatives would have cost.



Limon II wind energy and the avoided energy savings in the price paid for the Windsource LTC program RECs.<sup>94</sup>

202. Public Service identified the Windsource LTC program's benefits to the general body of retail ratepayers.

203. First, the Windsource LTC program acts as a governor. It decreases benefits to non-participating ratepayers in the event of high natural gas prices but also decreases their risks in the event of low natural gas prices.

204. Second, as discussed above, the Windsource LTC program REC price includes a contribution to the RESA so that non-participating ratepayers will share in the Limon II savings as natural gas prices rise.

205. Third, as to the hedge value of the Windsource LTC program, Public Service states that it retains approximately 17 percent<sup>95</sup> of the Limon II production for its retail ratepayers; this includes all retail ratepayers, including those participating in the Windsource LTC program. Hearing Exhibit No. 25 at lines 33 and 69 (Retail Savings (Remaining 17 percent RECs)). Because the Limon II production will vary from month to month with the wind, the Company believes that 17 percent is a conservative estimation of the Limon II production that remains with its system and, thus, with its retail ratepayers. Public Service states that this preserves a Limon II hedge value for non-participating retail ratepayers.

206. Fourth, under the Limon II PPA, Public Service pays for delivered energy and does not make any discrete payment for the capacity value that Limon II provides the Public

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<sup>94</sup> For most hours of the year, natural gas fuels Public Service's generation on the margin in the economic dispatch order.

<sup>95</sup> See discussion above with respect to this percentage.



Service system. Under the Windsource LTC program, participants will pay the difference between the Limon II total costs and the avoided energy cost and will not receive credit for the value of the capacity provided by Limon II. In the past Public Service resource acquisition proceedings, the Commission has approved use of the assumption that wind projects provide capacity that equals 12.5 percent of the nameplate rating of the wind facility. The Public Service system retains the entire capacity value of Limon II. In the Company's view, non-participating retail ratepayers receive the benefit of this "free" capacity from Limon II because Public Service can avoid or delay future generation construction or purchased capacity by relying on 12.5 percent of Limon II's 200 MW nameplate rating.<sup>96</sup>

207. As discussed above, if natural gas prices reach, and remain at, levels that are significantly lower than forecast by Public Service in the low natural gas price case, it is possible that a Windsource LTC program participant will have a negative Reward Fund balance at the conclusion of its contract term. Should that situation occur, Public Service will not seek to recover the negative balance from the participant; but the Company may charge the negative balance to the RESA.<sup>97</sup> Public Service provides these bases for that decision: (a) to market the Windsource LTC program successfully, the cap on a Windsource LTC participant's exposure needs to be \$ 12 per REC; (b) even with a negative Reward Fund balance at the end of the Windsource LTC program contract, the Windsource LTC program participant paid a large portion of the cost difference between the incremental cost of Limon II and system avoided costs; and (c) absent the Windsource LTC program, Public Service's retail ratepayers would have paid the

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<sup>96</sup> The capacity value of Limon II is shown on Hearing Exhibit No. 25 at lines 27 and 61 (Net Capacity Credit add back).

<sup>97</sup> If charged to the RESA, the negative Reward Fund balance would be recovered from all retail ratepayers through the RESA rate rider.



entire cost difference. Public Service argues that, assuming sustained very low gas prices (which Public Service sees as unlikely), non-participating retail ratepayers are better off with the Windsource LTC program participants' contributions than without those contributions.

208. The Company views the Windsource LTC program as a strong competitive option to offer its large ratepayers that may be considering other green products available on the market or on-site generation, or both. Public Service concludes that the record evidence and public policy support approval of the Windsource LTC program as presented in the Company's testimony.

## **2. Boulder.**

209. Boulder generally supports maintaining Limon II as a Public Service system resource for the reasons stated in the Limon II Decision. Boulder asserts that the essential issue with respect to the Windsource LTC program is whether the downside risk for Public Service's ratepayers of retaining Limon II as a system resource in the event that natural gas prices remain low (or go even lower) over the next 25 years outweighs the benefit to those ratepayers of potentially lower generation costs if natural gas prices rise over the course of the next 25 years. Boulder believes that rising natural gas prices are more likely than static or lower natural gas prices over the next 25 years. Thus, to preserve the full hedge value of Limon II for the general body of Public Service retail ratepayers, Boulder urges the Commission to retain the Limon II energy as a system resource.

210. Boulder also opposes approving the Windsource LTC program at present because there is no proposed contract available for Commission review and approval in this docket. Because RECs are commodities that are bought, sold, and traded on the open market and because Public Service proposes to sell RECs to Windsource LTC program participants, Boulder argues:



(a) §§ 40-3-101(1)<sup>98</sup> and 40-3-104(1)(a),<sup>99</sup> C.R.S., apply; (b) both the terms of the sale and any change to the terms of the sale must be fair and reasonable; (c) the Commission decides what is fair and reasonable; and (d) in making that determination, the Commission has a responsibility to protect the public interest regarding utility rates and charges. Boulder's concern about Commission review is heightened by Public Service's testimony during the hearing that the RESA may be charged for any negative balance remaining in a Windsource LTC program ratepayer's Reward Fund at the end of the contract. For these reasons, Boulder believes it is important that the Commission understand and approve all material terms of the Windsource LTC program contract before customers sign the contracts.

211. Furthermore, Boulder disagrees with the Public Service proposal that the Windsource LTC program standard-offer contract can be filed as a compliance filing after the Commission approves the program concept and establishes the contract terms in its decision. Based on its participation in the evidentiary hearing, Boulder believes that it would require significant effort by the Commission or its Staff to distill the Windsource LTC program's material terms and conditions from the record in this proceeding and that, in any event, Boulder believes there are many terms and conditions yet to be developed. Boulder asserts that, despite Public Service's initial position that all terms and conditions for the Windsource LTC standard-offer contract were included in its written testimony, it became clear during the hearing that significant contract terms had not been considered, much less decided, by Public Service. At

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<sup>98</sup> That statutory provision, in pertinent part, requires that "[a]ll charges made, demanded, or received by any public utility for any ... commodity furnished or to be furnished ... shall be just and reasonable."

<sup>99</sup> That statutory provision, in pertinent part, requires that "no change shall be made by any public utility in any rate, fare, toll, rental, charge, or classification or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility, except after thirty days' notice to the commission and the public[.]"



the conclusion of the hearing, according to Boulder, contract terms and issues remained unresolved.<sup>100</sup>

212. In addition, Boulder notes that Staff witness Camp testified that the Company's compliance filing proposal is unworkable because, generally, compliance filings are checked administratively to be sure that all clearly defined terms in a Commission order are included and for mathematical accuracy. The absence of fully-developed terms and conditions for the Windsource LTC program standard-offer contract, Boulder argues, militates against filing the Windsource LTC program standard-offer contract as a compliance filing for Staff administrative review.

213. Boulder recommends that the Commission not approve the Windsource LTC program until the Commission has had the opportunity to review a proposed standard-offer contract written and presented by Public Service.

214. In response to the concern that it neither prepared nor presented a Windsource LTC program contract in this docket, Public Service states that it is aware of no Commission rule that requires it to prepare and to file the contract as part of the Application. Public Service reads § 40-3-103, C.R.S., to require Public Service, at the time the program is offered, to have the Windsource LTC program contract on file with the Commission so that the contract is available for public inspection. Public Service states that it intends to comply with that requirement.

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<sup>100</sup> As an example, Boulder points out that no one could say whether a Windsource LTC program participant must purchase RECs equal to its entire annual electric energy consumption or may purchase only a portion of its usage.



215. As to the ability of the Commission to determine the terms and conditions, Public Service asserts: (a) it has presented the essential pricing terms for the Windsource LTC program; (b) it has explained the minimum contract term and the security that will be required of the participants; (c) it has explained when the participants will receive rewards if the REC prices are lower than the \$ 12 per REC payment; (d) it has explained that the calculations of the REC prices and rewards will be supported by an independent audit; (e) it has stated the remedies for breach of contract; and (f) it has explained how it intends to allocate RECs to participating and non-participating ratepayers. Public Service argues that it has provided on the record all of the material terms of the Windsource LTC program standard-offer contract.

216. Nonetheless, Public Service proposes, and recommends that the Commission include in its decision, a three-step process: (a) following a Commission decision approving the Windsource LTC program, Public Service will draft the Windsource LTC program contract and, within 30 days of the decision, will file it with the Commission for review; (b) there will be a 30-day comment period and a 15-day response period; and (c) should the Commission have any concerns that the contract language is not in the public interest after it reviews the contract language and the comments, the Commission will issue a subsequent order, after which Public Service will alter the language to comply with that decision. Public Service made this proposal in its Statement of Position. As a result, no other party has had the opportunity to respond.

### **3. CF&I and Climax.**

217. Climax and CF&I take no position as to whether the Commission should grant or deny the Application, including the Windsource LTC program. If the Application be granted, in whole or in part, however, Climax and CF&I recommend that the Commission affirm the strictly voluntary nature of the Windsource LTC program.



**4. CHEN.**

218. CHEN takes no explicit position on the Windsource LTC program,. CHEN is concerned, however, that the Windsource LTC program does not fulfill either the vision or the objectives of the Long Term Fixed Green Power product concept developed in the Renewable Energy Advisory Group, as that product is described in Hearing Exhibit No. 10 at Exhibit WLW-1 at 16. In addition, as a principal, stated goal of the Windsource LTC program, CHEN recommends that participants should not subsidize non-participants and that non-participants should not subsidize participants.

**5. Colorado Gas Producers.**

219. Colorado Gas Producers do not oppose the Application. However, they caution the Commission against relying on the natural gas price forecasts presented in this docket. For example, they point out that: (a) Hearing Exhibit No. 3 at Exhibit No. 10 (low natural gas prices case) and Hearing Exhibit No. 25 (natural gas price base case) contain, and rely on, the forecasts presented in the Limon II Docket and those forecasts were approximately one year old; and (b) the natural gas price forecasts presented in the Public Service 2011 ERP Docket and the natural gas commodity price forecast presented in Hearing Exhibit No. 26 are lower than the forecasts presented in the Limon II Docket and again in this docket. The Colorado Gas Producers conclude that the “practical effect of this situation in this docket is that the [Present Values of Revenue Requirement] of Windsource and [natural] gas as a substitutable product are distorted by the inconsistent natural gas price forecasts.” Colorado Gas Producers SOP at 2.

220. Colorado Gas Producers make two recommendations with respect to the Windsource LTC program.



221. First, they recommend that groups of retail ratepayers be permitted to aggregate their demand and that the Windsource LTC program should be made available both to groups of aggregated ratepayers and to large nonresidential ratepayers. In support of this recommendation, they assert: (a) the Public Utilities Law (Articles 1-7 of Title 40, C.R.S.) requires the Commission to approve facilities that are or will be necessary to provide utility service upon demand; (b) the Public Utilities Law does not address customer identity and does not speak in terms of retail or wholesale marketing rules; and (c) § 40-3-106(1), C.R.S., contains the requirement that a public utility must avoid unreasonable differences and unjust discrimination in rates and charges for utility service or electric or gas commodities. Colorado Gas Producers argue that the pertinent sections of the Public Utilities Law<sup>101</sup> focus on the charge for the product or service and that, as a result, Public Service should be indifferent to the identity of the customer/purchaser so long as the Company receives appropriate compensation. They conclude that there is no reason to prevent ratepayers from aggregating their choice in energy purchases on consistent terms and conditions. The Colorado Gas Producers also point out that permitting groups or aggregations of ratepayers to participate in the Windsource LTC program is a way to open Windsource LTC program participation to all ratepayers, as recommended by OCC and WRA.

222. CHEN agrees with the Colorado Gas Producers' recommendation. CHEN states that permitting aggregation incorporates into the Windsource LTC program one of CHEN's core principles of renewable-based design: community choice (*i.e.*, increase green product choices available to communities).

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<sup>101</sup> Colorado Gas Producers cite §§ 40-3-101, 40-3-105(2), 40-3-106(1), 40-4-101, 40-5-101, and 40-5-103, C.R.S.



223. Public Service opposes the aggregation recommendation because the scope of the recommendation is not clear from the record. Public Service identifies two types of aggregation: aggregation to purchase electricity and aggregation to participate in the Windsource LTC program.

224. If the Colorado Gas Producers advocate aggregation to purchase electricity, Public Service opposes the recommendation because this type of aggregation is not permitted under Colorado law. The Company points out that, in Colorado, electric utilities are regulated monopolies with exclusive retail service territories. As a result, unlike other jurisdictions in which electric utilities have been restructured to allow retail ratepayer choice and retail ratepayer aggregation, in Colorado there are no middlemen or brokers that aggregate ratepayer load.

225. If the Colorado Gas Producers advocate aggregation to participate in the Windsource LTC program, Public Service agrees that Colorado law permits aggregation of REC purchases. Given the paucity of the record on this issue and the practical difficulties that aggregation may present to the Company, to participants, and to non-participating ratepayers,<sup>102</sup> however, Public Service recommends that the issue of aggregation for the purpose of purchasing RECs be referred to, and studied by, the Renewable Energy Advisory Group.

226. CF&I and Climax oppose the Commission's granting any relief that expands or extends the Windsource LTC program beyond the proposal in the Application or any relief that expands or extends the scope of the docket as established in the Notice of Application Filed. They view the Colorado Gas Producers' recommendation to approve aggregation as beyond the

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<sup>102</sup> The following hypothetical provides examples of the practical difficulties. Assume a city aggregates the usage of its inhabitants (residential and business) to participate in the Windsource LTC program and, on the basis of that aggregated usage, becomes a Windsource LTC program participant. In that situation, to whom do the purchased RECs belong? To whom does the Reward Fund belong? From whom is the \$ 12 per subscribed REC collected?



scope of this proceeding; as not ripe for consideration in this docket; and as better resolved in a future proceeding, assuming the issue is properly raised in that future proceeding. CF&I and Climax request that, for the sake of clarity, if the Application is approved, the decision expressly state that we are not approving proposals that are beyond the relief sought in the Application or that are beyond the scope of the notice issued in this docket.

227. Second, the Colorado Gas Producers recommend that the Windsource LTC program include the ability of participants to choose, if they wish to do so, back-up (or dedicated) generation.<sup>103</sup> They support this recommendation as follows: (a) the Public Utilities Law does not preclude Public Service from dedicating facilities to certain ratepayers and accurately pricing the energy from those facilities;<sup>104</sup> (b) while Public Service historically has used, and uses at present, economic dispatch to deploy the resources on its system, nothing prohibits Public Service from making other choices or accounting determinations; (c) in terms of generating resource choices, Colorado regulatory policy has evolved to recognize costs and impacts (such as environmental, health, and visibility) on ratepayers; and (d) given the evolving nature of regulatory policy, the Commission should begin to consider allowing ratepayers to choose the generation from which they purchase their energy, and this is the first step in that consideration. Colorado Gas Producers acknowledge that the cost of the back-up resource would need to be included in the Windsource LTC program price. Colorado Gas Producers conclude that, if Public Service ratepayers wish to couple their participation in the Windsource LTC program with a choice of the generation that will back-up Limon II, they should be able to do so.

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<sup>103</sup> In this case, the Windsource LTC program is based on Limon II. Logically, the selected dedicated generation would back-up Limon II.

<sup>104</sup> In Colorado Gas Producers' view, this allows each ratepayer to pay a cost-based price for the service that ratepayer receives.



228. Public Service opposes the recommendation that discrete back-up generation be identified for the Limon II PPA. The Company states: (a) when the wind blows, Public Service will accept energy from Limon II; (b) when the wind does not blow, generating facilities from Public Service's entire system (in ascending order from lower to higher cost) supply the missing energy and, thus, back-up Limon II; (c) the use of economic dispatch is the least-cost method to integrate wind into the system; and (d) assigning specific generation to back-up Limon II is not the least-cost way to integrate wind.

229. Public Service observes that, once it has generation capacity in place to meet peak day loads, the focus is on generating energy at the lowest cost. In addition, the Company states that the incremental cost of using wind instead of natural gas is picked up in the avoided energy cost analysis and that the incremental energy cost will be paid by the Windsource LTC program participant through the REC price. Finally, the Company notes that the Windsource LTC program participants pay the full tariff rate and the incremental cost of the Limon II PPA (in addition to administrative costs and a RESA contribution). The tariff rates pick up the cost of the Public Service system, irrespective of the generation unit that backs up Limon II from time to time.

230. CF&I and Climax oppose the Colorado Gas Producers' recommendation. They state that requiring the Company to assign and to dedicate a generating facility to back-up the Windsource LTC program (*i.e.*, Limon II) is unnecessary, is inefficient, and is cost prohibitive.

231. Interwest also opposes the Colorado Gas Producers' recommendation. Interwest asserts: (a) Public Service's entire system acts as a cost-effective balancing system for all integration needs, including the natural variation in renewable generation production and the scheduled and unscheduled outages that result from the operation of coal-fired and natural



gas-fired plants; (b) designating an individual facility as the Limon II back-up would be unworkable, would be expensive, and would eliminate the now-present efficiencies of aggregation of load and resource variation; and (c) if Limon II back-up is necessary, economic dispatch should be used to choose the cost-least resource available.

232. WRA opposes the Colorado Gas Producers' recommendation. WRA argues that it is more reliable and more cost effective for Public Service to balance Limon II with other resources across its system than to assign a specific generation unit to back up Limon II.

## **6. GEO.**

233. GEO supports the Windsource LTC program because it is an innovative product offering that expands the use of renewable resources. In GEO's opinion, the low cost of the Limon II PPA will allow the Company to make changes to the Windsource program, including the proposed Windsource LTC program, that will benefit both participants and non-participants.

## **7. Glustrom.**

234. Ms. Glustrom does not support the proposal and recommends that the Commission not approve the Windsource LTC program as presented. She has two bases for her recommendation.

235. First, Ms. Glustrom believes there are a significant number of important and unresolved issues with respect to the Windsource LTC program and its complexity, including how the program ensures that the benefits of the Limon II PPA are preserved for the general body of Public Service's retail ratepayers, as required by Decision No. C11-1291.

236. Second, in this proceeding, Public Service did not present for Commission review a proposed standard-offer contract for the Windsource LTC program. Without a proposed



standard contract that contains the terms and conditions of the Windsource LTC program, Ms. Glustrom believes there are too many unanswered questions.

237. Public Service's response to the concern that the standard-offer Windsource LTC program contract was not presented in this case is set out above.

## **8. Interwest.**

238. Interwest supports the Windsource LTC program because the program reduces the Limon II PPA's adverse cost risk to non-participating retail ratepayers. In addition, Interwest opines that institutions such as churches, schools, and hospitals likely would respond to this program because it would provide hedge value (protection) against variable fuel costs; important social benefits (*e.g.*, reduced air pollution, lower emissions-related adverse health effects); and national and economic security through diversification of energy resources with increased use of indigenous renewable generation resources (*e.g.*, wind and solar).

239. Despite its support for the Windsource LTC program, Interwest objects to Public Service's use in this docket of wind integration costs and coal cycling costs based on studies, models, and assumptions that the Commission has not approved. Interwest notes that Public Service agreed that the wind integration study and the coal cycling study will be reviewed in the Public Service 2011 ERP Docket.

240. Interwest is concerned that approval of the Windsource LTC program may create a presumption, or may have a precedential effect, related to wind integration and coal cycling cost factors.<sup>105</sup> Consequently, pending review and Commission approval in the Public Service

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<sup>105</sup> As discussed above, these components are used to determine Limon II's costs. *See, e.g.*, Hearing Exhibits No. 22, No. 23, No. 24, and No. 25.



2011 ERP Docket, Interwest opposes creation, in this docket, of any such effect and reserves its objections to the wind integration study, to the coal cycling study, and to their use in this docket.

241. Interwest asserts that correction of the modeling errors in the studies relied on by Public Service in this docket will require the additional study that will occur in the Public Service 2011 ERP Docket; that, when made, the corrections will reduce the overall cost of wind on the Company's system; and that, when made, the corrections will increase the avoided cost savings provided by the Limon II contract. In Interwest's opinion, when the correct wind integration costs and coal cycling costs are used, the benefits of the Windsource LTC program will be greater for both participants and non-participants.

## **9. OCC.**

242. OCC does not support the Windsource LTC program unless the Commission conditions the program as follows: (a) the program must contain provisions that prevent participants from gaming the program; (b) the program must be made available to residential and small nonresidential ratepayers; (c) large nonresidential ratepayers in Boulder must be protected from irreversible harm; (d) the standard-offer Windsource LTC program contract must be reviewed and approved before final approval of the program; and (e) the Windsource LTC program marketing and administration expense must be supported by a cost study and must be paid by Windsource LTC program participants only. Each is discussed below.

243. In support of its condition regarding provisions to prevent gaming, OCC states that, in the early years, the Limon II energy is higher cost than it is in later years and that, at present, Limon II is a system resource and that all ratepayers pay the cost of Limon II energy. Given these facts, OCC is concerned that ratepayers who are interested in participating in the Windsource LTC program may delay subscribing to the program until the higher-cost early years



are past. This would have the effect, according to OCC, of allowing these large ratepayers to leave the general body of ratepayers to pay the higher early-year cost of Limon II energy and to allocate a portion of the lower later-year cost Limon II energy to themselves.

244. OCC acknowledges that Public Service witness Mudd agreed with the OCC that there should be safeguards to reduce gaming and made proposals to address this issue. Thus, as discussed above, the Windsource LTC program contains a time-limited reservation period and a time-limited period within which an eligible ratepayer must sign a Windsource LTC program contract.

245. Notwithstanding these changes, OCC asserts that Public Service made no commitment as to the following: (a) whether the Windsource LTC program will be a one-time product offering; (b) assuming subsequent offerings, how the subsequent offerings will be structured; and (c) assuming subsequent offerings, what the terms, conditions, and price of the offerings will be (*i.e.*, will they be the same as, or will they differ from, the terms, conditions, and price in the program now before us). Thus, to prevent gaming in the event of future program offerings, OCC recommends that the Commission impose this condition on its approval of the Windsource LTC program: require any subsequent Windsource LTC program offering to be structured as a one-time offer with a time-limited subscription period and require Public Service to obtain Commission approval before Public Service offers a Windsource LTC program that has terms, conditions, or a price different than the Windsource LTC program before the Commission in this docket.

246. In support of its recommendation that residential and small nonresidential ratepayers be permitted to participate in the Windsource LTC program, at least on a pilot program basis, OCC argues: (a) § 40-3-102, C.R.S., prohibits unjust discrimination; (b) Public



Service has the burden of proof with respect to the Application and the Windsource LTC program; (c) Public Service did not present sufficient evidence to support limiting Windsource LTC program participation to large ratepayers; and (d) as a result, limiting program eligibility as proposed constitutes unjust discrimination and is prohibited by the cited statute. Thus, OCC recommends that we make this a condition of our approval of the program.

247. Public Service responds that the evidence shows: (a) the Windsource LTC program is complex; (b) the mechanics of the program requires careful and detailed explanation to potential participants, and large ratepayers have dedicated account managers available to perform this educational function; (c) sophisticated (that is, large) ratepayers are the type of customers most likely to understand the intricacies, and to see the benefits, of the program; (d) the minimum contract term is five years; (e) there are financial penalties for breach of the contract; and (f) offering the Windsource LTC program to all ratepayers would generate significant administrative and marketing costs. Public Service asserts that there is ample record support for restricting program eligibility to large ratepayers.

248. In addition, Public Service believes that, given the availability of the lower-priced, easier to understand Windsource Standard Service, residential ratepayers and small nonresidential ratepayers would not be interested in the Windsource LTC program. Public Service is willing to discuss a residential and small nonresidential ratepayer Windsource LTC pilot program in the Renewable Energy Advisory Group.

249. The OCC recommendation about the treatment of Boulder customers is discussed below.

250. In support of its recommendation that we review and approve the standard-offer Windsource LTC program contract prior to final approval of the program, OCC states that the



record is clear that: (a) Public Service has not drafted, and thus did not present in this docket, a proposed or model standard-offer contract for the Windsource LTC program; and (b) Public Service sees one purpose of this docket as providing enough information to allow the Commission to formulate and to give guidance to Public Service with respect to the terms, conditions, and price of the program and the contract. Like Boulder, OCC takes the position that the Company should draft the proposed or model Windsource LTC program contract and submit it for review and Commission approval.

251. Public Service's response to, and its suggested process with respect to, this issue are discussed above.

252. In support of its recommended condition that the Windsource LTC program marketing and administration expense must be supported by a cost study, OCC states that the record shows: (a) the \$ 1.00 per REC Windsource LTC program marketing and administration expense shown on Hearing Exhibits No. 22, No. 23, and No. 24 and described in the testimony of Public Service witness Mudd is a placeholder amount; and (b) Public Service has not conducted a cost study to determine the marketing and administration expense, has no plans to use a cost study to support that expense, and states that the expense could change on an annual basis. OCC argues that Public Service has the burden of proof to establish that such a fee is a just and reasonable charge and that Public Service has not met that burden of proof. Accordingly, OCC recommends that the Commission impose this condition on approval of the Windsource LTC program: before Public Service may assess or collect the Windsource LTC program marketing and administrative expense, Public Service must make an appropriate evidentiary showing of the actual marketing and administrative costs incurred.



253. In support of its recommended condition that only Windsource LTC program participants should pay the Windsource LTC program marketing and administration expense, OCC states that Public Service witness Mudd testified (March 23 tr. at 163:5-165:10) that all Windsource subscribers, irrespective of whether they are Windsource LTC program participants, will pay the annual Windsource LTC program marketing and administration expense. OCC asserts that Public Service has the burden of proof to establish that such a fee is a just, reasonable, and non-discriminatory charge. OCC argues that the evidentiary record contains no evidence that supports requiring non-participants to pay the Windsource LTC program-related marketing and administration expense and argues that requiring non-participating ratepayers to pay any portion of the Windsource LTC program-related administrative and marketing charge constitutes a discriminatory, unjust, and unreasonable charge, which is prohibited by §§ 40-3-101(1) and 40-3-106(1)(a), C.R.S. Accordingly, OCC recommends that we impose this condition on approval of the Windsource LTC program: Public Service may collect Windsource LTC program marketing and administrative expenses only from Windsource LTC program participants.

#### **10. Staff.**

254. Staff recommends that the Commission deny, without prejudice, Public Service's Application with respect to the Windsource LTC program. There are five principal reasons for Staff's position: (a) Public Service did not meet its burden of proof; (b) the record does not contain sufficient information either for the Commission to approve the content or structure of a standard-offer contract for the Windsource LTC program or for Staff to review a submitted contract as a compliance filing; (c) the record does not contain information sufficient for the Commission to determine whether the Windsource LTC program protects all Public Service



ratepayers in the event of high natural gas prices; (d) under the Windsource LTC program, non-participating ratepayers are assigned counter-party responsibility; and (e) Public Service did not give adequate consideration to lost sales revenue opportunities.

255. In support of its position that Public Service did not meet its burden of proof, Staff asserts: (a) throughout its direct and rebuttal case, Public Service corrected errors in its exhibits (*see, e.g., note 10*, above); (b) Public Service witness Mudd, who is the Product Portfolio Manager and is responsible for the Windsource LTC program, had difficulty responding to questions about the program and proposed changes; and (c) Public Service witness Mudd seemed to create aspects or details of the Windsource LTC program as he responded to questions. This leads Staff to the conclusion that, even after the evidentiary hearing, the program is unsupported by evidence; remains conceptual in nature; and is too amorphous for approval.

256. In support of its position that the Commission should deny the Windsource LTC program because a proposed or model contract is not in the record and the record lacks sufficient information to allow the Commission to give guidance as to the content or structure of the contract, Staff makes arguments similar to those made by Boulder and OCC. Staff argues that, as described above, the record contains nothing more than a vague, often-shifting description of the broad outlines of the Windsource LTC program, with no clear statement of the program's specific terms and conditions or of the cost impacts on non-participating ratepayers. Staff takes the position that it is not the Commission's job to fashion either the contract language or the parameters of the Windsource LTC program.

257. In addition, Staff argues that the absence of a contract to review precludes a Commission determination that approval of the Windsource LTC program is in the public interest. Staff states that the Windsource LTC program is a complex financial transaction, the



value of which will change over time based on numerous variables (*e.g.*, the cost of natural gas, Public Service's system generation costs, and the avoided costs difference between Limon II and the Company's system). Without a proposed or model contract, Staff asserts, the Commission cannot make the required public interest determination.

258. Public Service's response to, and its suggested process with respect to, the contract issue are discussed above.

259. In support of its position that the record does not contain information sufficient for the Commission to determine whether the Windsource LTC program protects all Public Service ratepayers in the event of high natural gas prices, Staff notes that, in the Limon II Docket, Public Service presented three natural gas price forecasts: a low price case, a base price case, and a high price case. In the Limon II Docket, the Commission approved Limon II as a hedge against high natural gas prices.

260. Staff points out that, in the instant docket, Public Service presented a low natural gas price case<sup>106</sup> and a natural gas price base case but not a high natural gas price case. Under the natural gas price base case (Hearing Exhibit No. 25) and assuming 17 percent of the Limon II MWh/RECs remains a system resource, the Windsource LTC program results in a loss of benefits to non-participant retail ratepayers of approximately \$ 18.3 million as compared to retaining the Limon II MWh/RECs as a system resource. Although there is no high natural gas price case, Staff observes that Public Service witness Haeger testified (March 22 tr. at 104:19-23)

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<sup>106</sup> Staff notes that Public Service witness Mudd and Public Service witness Haeger presented inconsistent testimony with respect to whether the low natural gas price case is likely to occur over the 25-year term of the Limon II PPA. *Compare* Hearing Exhibit No. 5 at 23:4-15 (testimony of Mudd) and March 22 tr. at 103:1-8 (testimony of Haeger) *with* March 23 tr. at 56:1-57:9 (testimony of Haeger).



that, generally speaking, one could expect the loss of benefits to non-participants to be higher than \$ 18.3 million under a high natural gas price case.

261. Staff argues that the Commission should be concerned about retaining the opportunity for all ratepayers to realize savings should natural gas prices increase over the 25-year term of the Limon II PPA. Staff points out that, if natural gas prices are low, all ratepayers benefit. If natural gas prices increase, however, Limon II PPA as a system resource will help to offset those higher generation costs and, to some degree, will protect the general body of ratepayers against the higher system energy costs. Staff asserts that this potential hedge value is a significant benefit to the general body of ratepayers and outweighs any potential benefits from the Windsource LTC program that could accrue to the general body of ratepayers. Given the inherent uncertainty of future natural gas prices and the hedge value of the Limon II PPA, Staff urges the Commission to focus on retaining the system benefits that underpinned approval of the Limon II PPA and not to alter that PPA's benefit/cost dynamic as proposed by Public Service in this docket.

262. In support of its position that the Commission should not approve the Windsource LTC program because non-participating ratepayers are assigned counter-party responsibility, Staff states that, although the Windsource LTC program contract is between Public Service and the participating entity, Public Service's sole responsibilities are to retire the Limon II RECs on behalf of the program participants and to administer the program (including collecting from the participants the \$ 12 per subscribed REC). Public Service receives its payment for the Limon II energy from the general body of ratepayers (through the ECA and the RESA rate riders) or from the program participants. Thus, although it is a signatory to the



Windsor LTC program contract (*i.e.*, the counter-party to the participating entity), Public Service has neither financial responsibility under, nor real interest in, the contract.

263. Under the Windsor LTC program, Staff states, a select group of ratepayers (*i.e.*, those who consume at least 120 MWh annually) receive risk mitigation with respect to future higher natural gas prices, future system generation performance, and future pricing of RECs. Staff contends that the program structure assigns all counter-party responsibilities (*e.g.*, the risk of higher natural gas prices and the loss of existing benefits from the Limon II PPA as a system resource) to the general body of retail ratepayers, who are unknowing participants in complex financial instruments. Staff urges the Commission to reject this disparate treatment because it allocates rewards and savings to Windsor LTC participants, which are a small group of large ratepayers, and compels non-participant ratepayers unknowingly to surrender system savings or, under certain circumstances, to assume additional costs.

264. In support of its position that the Commission should not approve the Windsor LTC program because Public Service did not give adequate consideration to lost sales revenue opportunities, Staff asserts that, if the program is approved, almost 75 percent of the RECs generated annually by Limon II will be transferred from the general body of ratepayers to Windsor LTC program participants. Staff states that the record contains little or no evidence that Public Service considered the lost REC sales opportunities for, and the revenue that could be generated from, selling those RECs outright (*e.g.*, off-system) while retaining the system benefits of Limon II. Absent information about, and consideration of, those sales opportunities for Limon II-generated RECs, Staff asserts that the Company's analysis of the allocation of RECs to the Windsor LTC program is incomplete and the Commission's ability to determine whether the program is in the public interest is hampered appreciably.



**11. WRA.**

265. WRA supports the Application only if the Commission approves both the Windsource Standard Service and the Windsource LTC program. In WRA's view, both of the proposed Windsource programs are required to maintain the current level of contribution provided by Windsource to renewable energy acquisition. If only one of the proposed programs is approved, WRA recommends denying the Application and continuing the current Windsource program.

266. Assuming the Commission grants the Application *in toto*, WRA recommends that the Commission require Public Service to include in its annual RES Compliance Report, filed pursuant to Rule 4 CCR 723-3-3662(a), the following information about the Windsource LTC program: (a) the annual average REC price paid and the Reward Fund balance total; (b) marketing and administration costs; (c) any shortfall in anticipated subscriptions, any observed trends in discontinued contracts, and any other indicators of the program's popularity; and (d) a narrative on participant feedback and the results of any market research. WRA asserts that this information is valuable in monitoring the effect and success of the Windsource LTC program and in understanding, and responding to, market demand. WRA argues that this information is necessary to supplement current reporting requirements that do not describe subscription trends across ratepayer classes and over time.

267. Assuming the Commission grants the Application *in toto*, WRA recommends that, as Windsource LTC program contracts expire and Windsource LTC program RECs become available, the Commission: (a) should assess whether to offer the available RECs to new or resubscribing Windsource LTC program participants (or both) or to retain the RECs as a system resource; and (b) if the available RECs are offered to Windsource LTC program participants



(whether new or re-subscribing participants), should review and approve any updated contract terms, conditions, and price. WRA observes that any updated terms, conditions, and price should balance potential rewards and risks in a way that is similar to the reward-risk balance of the initial Windsource LTC program.

268. Assuming the Commission grants the Application *in toto*, WRA recommends that Public Service make a product similar to the Windsource LTC program available to residential and small nonresidential ratepayers, at least on a pilot basis. In WRA's view, these ratepayers should be given the opportunity to decide for themselves if the rewards and risks of a Windsource LTC program are in their interest. WRA recommends that Public Service reserve a portion of the Limon II RECs for such a pilot program<sup>107</sup> and that the Renewable Energy Advisory Group advise Public Service on the details of the pilot program.

269. Public Service responds that it welcomes the opportunity to discuss, in the Renewable Energy Advisory Group, the possibility of offering to residential and small nonresidential ratepayers a program that is similar to the Windsource LTC program.

**C. Discussion and Conclusions.**

270. When we referred this proceeding to an ALJ, we reiterated our

direction in [the Limon II Decision at ¶ 27] that the Company's general customer base obtain the maximum benefits from the Limon II contract [and directed] the ALJ to examine [three issues: [a]] whether the Company's proposed changes to Windsource will reduce the value of the Limon II PPA as a hedge against natural gas price volatility, [b] whether these proposed changes will better allow the Limon II PPA to reduce costs to consumers in the long run, and [c] whether the

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<sup>107</sup> WRA does not specify the number of Limon II RECs that should be set aside. In addition, it is not clear whether the Limon II RECs set aside for the proposed pilot program would come from the 560,000 Windsource LTC program RECs or from the RECs that remain as a system resource.



proposed changes ultimately provide the optimal benefit for all of the Company's customers.

Decision No. C11-1336 at ¶ 12. Applying these standards and for the reasons discussed below, we will not approve the Windsource LTC program and will deny the Application with respect to that program.

271. First, Public Service has not adequately explained the public interest component of the Windsource LTC program.

272. In most cases, a public interest determination involves a balance between the interests of the utility's shareholders and the interests of its ratepayers. In this case, however, Public Service does not appear to have any direct financial stake in the contemplated transactions (costs are entirely borne by retail ratepayers who are, in Staff's words, the "counter party" to the overall deal); its only obligations are to collect money from ratepayers, to move funds between various accounts, and to retire RECs for the benefit of volunteer subscribers.

273. The principal regulatory issue here, therefore, is balancing the interests of non-participating retail ratepayers against the interests of the participating retail ratepayers within the context of the Limon II Decision. While we do have a similar balancing responsibility in some circumstances (*e.g.*, a Phase II rate case where responsibilities for the utility's total revenue requirements are split among various ratepayer classes), in this instance, Public Service offers no compelling reason to justify the unraveling of the benefits and costs of Limon II.<sup>108</sup>

274. When we approved the Limon II PPA, we undertook a benefit/cost analysis; agreed with Public Service that the contract was, overall, a system benefit; and found the

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<sup>108</sup> The record reveals, for example, no apparent threat of fleeing customers, of stranded costs, of lost sales, of ratepayer inequities, or of any harm to ratepayers that the Windsource LTC program is intended to address.



Limon II contract to be in the public interest because of the system benefits. We find no public interest in now segmenting and pricing out pieces of the Limon II contract to provide a new program for a subset of the Company's large ratepayers that think natural gas prices will increase high enough to benefit them under the allocations, formulas, and payment schedules underlying the Windsource LTC program.

275. Second, we find that no public policy objective is met by our approving cross-customer transactions that are as speculative as those in the Windsource LTC program. This is especially the case where, as here, large ratepayers already have the ability to avail themselves of complex financial instruments to hedge against the impacts of high fossil fuel prices.

276. For instance, in order to estimate the potential benefits that non-participants are expected to experience, we must assess the feasibility of the projected natural gas prices and the system capacity costs used by Public Service to calculate Limon II costs and system savings. In this regard, we are mindful that, as the Colorado Gas Producers pointed out, the natural gas prices used in this docket are at least one year old; are not current; may be too high; and, as a result, may overstate system benefits. In addition, the capacity credit that Windsource participants forego to non-participants as a "guaranteed payment," and that is used in the calculation of system benefits to retail ratepayers, is based on an assumed monetization of the theoretical value of the capacity provided by Limon II to Public Service's system.<sup>109</sup> Further, the

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<sup>109</sup> Public Service states that "[the] capacity credit is based on the expected contribution of the Limon II wind farm to meeting the Company's peak demand (12.5% of the nameplate capacity of the wind project is consider[ed] its contribution to system peak demands)" (Hearing Exhibit No. 1 at 10:8-11) and that "the 25 MWs of capacity made available by Limon II will allow the Company to contract for fewer resources in the future and therefore the credit to the ECA ... is automatic and no further adjustment needs to be made to the ECA or the Windsource program as a result of the capacity credit" (*id.* at 11:16-20).



credits to the RESA that participants provide to non-participants as a “guaranteed payment” are also formulaic, since the level of credit is a function of natural gas costs, rising from a minimum of \$ 3 per subscribed REC up to \$ 9 per subscribed REC when natural gas sells at \$ 9/MMBtu. Given the questionable natural gas price data and the other uncertainties, we have insufficient basis on which to assess the feasibility of the projected natural gas prices and the system capacity costs used by Public Service to calculate Limon II costs and system savings.

277. Third, the terms of the Windsource LTC program will require non-participating retail ratepayers to pay through the ECA rate rider more than the actual costs of the Limon II contract since these excess payments will be used to fund the cash savings afforded to program participants in the event that Limon II actually functions as a significant hedge against high and rising natural gas prices. We conclude that these terms are not appropriate. We find no public interest in requiring the general body of ratepayers to fund payments to participants’ Reward Funds in order to provide the participants with hedge value in the event of higher natural gas prices.

278. As demonstrated by an examination of Hearing Exhibit No. 23, Public Service proposes to charge all retail ratepayers (through the ECA) the “incremental cost” for natural gas-produced electricity in the situation where natural gas prices are high.<sup>110</sup> The ECA revenue requirement for Limon II would increase by about \$ 2.8 million,<sup>111</sup> for a total ECA revenue requirement of \$ 26.1 million instead of the \$ 23.3 million. Public Service could charge its retail ratepayers approximately \$ 37.50 per MWh for Limon II wind energy rather than the

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<sup>110</sup> The existing low natural gas prices mean the high avoided costs in Hearing Exhibit No. 23 are possible but not likely in the near-term.

<sup>111</sup> 560,000 MWh (Windsorce LTC program full subscription) X \$ 5 per REC = \$ 2.8 million.



approximately \$ 32.50 per MWh that is Public Service's actual total cost for the Limon II energy.

279. The cash flows depicted in Hearing Exhibit No. 23 thus cause us to question Public Service's estimate, set forth in Hearing Exhibit No. 25, that system savings with the Windsource LTC program could be \$ 68.1 million, compared to retail system savings of \$ 83.4 million without the program. In particular, it appears that Public Service failed to take the cash payments from ratepayers to program participants into account in its derivation of retail savings to the system. In addition, based on our review of the evidentiary record, Public Service did not present any retail system savings analysis that assumed high natural gas prices; thus, there is no analysis of the impact on system savings of payments made to the Windsource LTC program participants by the general body of ratepayers from ECA contributions.

280. It is the policy of the Commission that retail ratepayers shall pay, through a combination of the ECA and the RESA rate riders, no more than the actual total costs of renewable energy resources. Therefore, we do not rely on the system savings analysis presented by Public Service in this docket.

281. Finally, we agree with Staff that the Company's proposal is complex and conceptual in nature; and that Public Service did not make an adequate, clear presentation of the program for our consideration. The Company's late suggestion of a procedure for submitting a contract for review and comment after we approve the Windsource LTC program is not acceptable because: (a) we are not inclined to approve the program for all the reasons set forth earlier; and (b) the suggested procedure creates a second, potentially contentious, proceeding that would consume the resources of the Commission and the Parties.



282. Given the inherent uncertainty of future natural gas prices and the established hedge value of the Limon II PPA (which we discussed in the Limon II Decision), and based on the evidentiary record before us, we conclude that we should retain the system benefits that underpinned our approval of Limon II and should not alter that benefit/cost dynamic as proposed by Public Service.

283. We find that Public Service did not meet its evidentiary burden in this proceeding. In addition, Public Service failed to convince us, on policy grounds, that we should approve the Windsource LTC program. We will deny that portion of the Application.

284. Given our decision not to approve the Windsource LTC program, we find it unnecessary to address the conditions and recommendations offered by CF&I and Climax, Colorado Gas Producers,<sup>112</sup> Interwest, OCC, and WRA. These recommendations assumed approval of the Windsource LTC program and, thus, are moot as a result of our ruling.

## **VII. ADDITIONAL ISSUES**

### **A. Large Public Service Customers in the City of Boulder.**

285. At the time the Application was filed, Public Service had filed an application for authority, among other things, to exclude customers located in Boulder from participating in the Windsource LTC program.<sup>113</sup> Public Service was concerned about entering into Windsource LTC program contracts, which have minimum terms of five years, with customers that may not be able to perform their obligations for the full contract term due to an action by Boulder that would

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<sup>112</sup> As to the recommendations presented by the Colorado Gas Producers, we find that the recommendations are beyond the scope of this proceeding. We further find that, assuming the recommendations are within the scope of the proceeding (which they are not), the Colorado Gas Producers did not meet their burden of proof with respect to their recommendations.

<sup>113</sup> That application opened Docket No. 12A-155E, *In the Matter of the Application and Petition for Rule Waiver of Public Service Company of Colorado for Authority to Offer Different Contract Terms to Customers Within the City of Boulder* (2012 Waiver Docket).



prevent their performance. That docket was pending at the time of the evidentiary hearing and the filing of statements of position in the instant proceeding.

286. In the instant docket, several intervenors opposed, until and unless the Commission granted the authority sought in the 2012 Waiver Docket, any proposal that would disadvantage Boulder customers that wish to participate in the Windsource LTC program. Public Service agreed that it would not take any action that would disadvantage those Boulder customers from reserving and obtaining RECs under the Windsource LTC program until and unless the Commission granted the authority sought in the 2012 Waiver Docket.

287. On July 13, 2012, we issued Decision No. C12-0798 in the 2012 Waiver Docket. For the reasons discussed in that Decision, we found that the application filed in that docket and the relief sought are premature at this time. Accordingly, by that Decision, we dismissed, without prejudice, the application in the 2012 Waiver Docket.

288. We find that dismissal of the application in the 2012 Waiver Docket and our decision to deny the Application in this docket render moot the issue of the treatment of Public Service ratepayers that are located in Boulder.

**B. Renewable Energy Advisory Group.**

289. As discussed above, the Renewable Energy Advisory Group was created as a result of the settlement approved in the 2008 Windsource Docket. That group met, issued the report found at Hearing Exhibit No. 10 at Exhibit WLW-1, and apparently was disbanded or ceased to meet after the report was filed. Several parties in this docket participated in the Renewable Energy Advisory Group.

290. During the course of this docket, several intervenors requested that the Commission require Public Service to reconvene the Renewable Energy Advisory Group and



direct the group to consider specific product concepts and issues referred to it by the Commission.<sup>114</sup> Public Service agreed with the concept of reconvening the Renewable Energy Advisory Group but did not promise or commit to implement program concepts that the Renewable Energy Advisory Group might develop.

291. CHEN is willing to discuss the development of a Windsource-like offering to foster development of solar-based product offerings in a reconvened Renewable Energy Advisory Group. CHEN is not willing, however, simply to revisit program concepts and issues that it believes were fully vetted by the previous group. Accordingly, CHEN proposes a process designed to obtain results as quickly as possible<sup>115</sup> and recommends that the Commission give clear direction as to what it expects the Renewable Energy Advisory Group to discuss.<sup>116</sup>

292. Like CHEN, WRA supports reconvening the Renewable Energy Advisory Group to design and to prepare to market a solar product within a Windsource-like program. WRA believes that, by considering the input of interested persons in the design and marketing process, there likely will be a better market response to the separate solar product. In addition, WRA

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<sup>114</sup> The issues that various parties wish to have referred to the Renewable Energy Advisory Group are identified throughout this Decision.

<sup>115</sup> In general terms, that process includes: (a) Public Service's filing with the Commission a public notice announcing the formation of the Renewable Energy Advisory Group whose members will include the Parties here and other interested persons; (b) Public Service's creation of a Renewable Energy Advisory Group website that contains, *e.g.*, meeting notices, agendas, a record of each meeting, and a final and minority report; (c) no fewer than four meetings of the Renewable Energy Advisory Group, with the first meeting to occur no later than 30 days following the Commission decision in this docket; (d) the Renewable Energy Advisory Group's submitting, within six months of the decision in this docket, its recommendations and a minority report, if any, to the Commission (the recommendations are to include a date certain for the Company's filing at least one application for authority to offer a new product or service); and (e) the Commission's opening a miscellaneous docket to serve as a repository for comments and suggestions for steps leading to new product offerings.

<sup>116</sup> CHEN recommends that the guidance include instructions that the group focus on: (a) technology diversity (*i.e.*, biomass, small hydro, solar, thermal, and wind energy); (b) local ownership (*i.e.*, in-state or local ownership of generating facilities, thus keeping the project's cash flow local); (c) serving local load (*i.e.*, the generating facility should serve electric load within the community where it is sited); (d) community choice (*i.e.*, allow communities to aggregate residential and commercial customers to support community-based projects); and (e) consideration of Demand-Side Management (DSM) (*i.e.*, incorporate DSM as a community-based asset).



notes that Public Service agrees that its ratepayers want more voluntary green product offerings. Further, WRA generally agrees with CHEN's proposed process. Finally, WRA recommends that the Renewable Energy Advisory Group consider WRA witness Farnsworth's solar product guidelines because they are intended to encourage new development.

293. In Public Service's opinion, the record in this docket does not contain sufficient information for the Commission to conclude that any new renewable energy programs, other than the Windsource programs presented by Public Service, should be offered. Public Service states that the better course is to reconvene the Renewable Energy Advisory Group with an expanded membership as suggested by CHEN. Public Service agrees to reconvene the Renewable Energy Advisory Group after the conclusion of this docket.

294. Staff takes the position that it is not necessary for the Commission to order Public Service to reconvene the Renewable Energy Advisory Group. Staff states that, if Public Service believes (as it testified) that the Renewable Energy Advisory Group process provides a benefit to the Company, the Company may convene a Renewable Energy Advisory Group meeting at any time, without a Commission order.

295. We agree with Staff. As a result, we will not order Public Service to work with stakeholders on new voluntary green energy proposals. However, we encourage Public Service to follow through on its commitment to convene such a stakeholder group in the near future.

**C. Current Policy Regarding Automatic Cancellation of Participation in the Windsource Program.**

296. At present, Public Service's policy is automatically to cancel a Windsource subscriber's participation in the Windsource program when the subscriber moves, even if the subscriber moves to a location within the Company's service territory. In order for a Windsource



subscriber who has moved to remain a Windsource subscriber, that person must subscribe from the new location.

297. At present, the Company does not provide to a relocating Windsource subscriber, explicit information about the policy or about the need to subscribe again in order to remain a Windsource subscriber. The automatic cancellation policy is not in the Windsource tariff.

298. With respect to the Windsource program's residential subscriber base, Public Service data show that, in the period 2008 to 2011, Windsource lost almost 9,000 residential subscribers due to the subscribers moving from their premises. This is approximately three and one-half times the number of residential Windsource subscribers (2,560) who voluntarily left the program. Hearing Exhibit No. 7 at Exhibit GF-3 at 1 and 3. Thus, the record shows that most of Windsource's residential subscriber losses appear to be the result of the automatic cancellation policy.

299. To address the Windsource participation attrition due to the automatic cancellation policy, WRA makes three recommendations.

300. First, the Commission should direct Public Service to implement a call center script review and a quality assurance process to ensure that a subscriber receives notice that the Windsource subscription is not transferred to the new location and generally to inform ratepayers of their voluntary renewable energy program options.

301. Second, the limitations of the Company's current customer service software appear to be the basis for the automatic cancellation policy. If Public Service implements a customer service software system for residential and small nonresidential customers that permits tracking by customer, the Company should change its policy to an automatic transfer of Windsource participation unless the customer moves outside of the Public Service territory.



302. Third, irrespective of customer service software upgrades, if the Commission grants the Application, Public Service automatically should transfer current Windsource subscribers to the Windsource Standard Service, with notification of the program changes, unless the subscriber opts to participate in the Windsource LTC program.

303. GEO supports WRA's efforts to ensure that a Windsource subscriber maintains participation when the subscriber moves to a new location within the Company's service territory. GEO believes that the improvements suggested by WRA will increase participation and retention of Windsource subscribers.

304. Public Service commits that it will work with its call center personnel to analyze the process and the language (*e.g.*, the script) used by call center personnel when Windsource subscribers move from their current premises.

305. Based on our review of the record, it appears to us that the Parties have reached an accord on this issue. We agree with WRA and Public Service that it is appropriate for the Company to review the script used by the Company's call center personnel to ensure that a Windsource subscriber receives notice that the subscription is not transferred to the new location and generally to inform ratepayers of their voluntary renewable energy program options. Because Public Service has agreed to do such a review, we will not order the review.

## **VIII. ORDER**

### **A. The Commission Orders That:**

1. Consistent with the discussion above, the Verified Application filed on October 13, 2011 by Public Service Company of Colorado is denied.

2. The Motion for One-Day Extension of Time to File Statement of Position filed on April 19, 2012 by the Colorado Governor's Energy Office is granted.



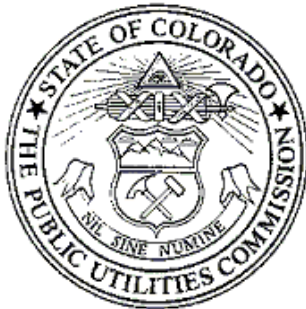
3. The late-filed Statement of Position of the Colorado Governor's Energy Office is accepted.

4. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Order.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
August 29, 2012.**

(S E A L)



ATTEST: A TRUE COPY

*Doug Dean*

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

PAMELA J. PATTON

Commissioners