Decision No. C02-1122

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02A-438E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF LAMAR WIND ENERGY SUPPLY AGREEMENT AND FOR THE RATE MECHANISM TO RECOVER THE COSTS OF THE AGREEMENT.

INITIAL COMMISSION DECISION APPROVING STIPULATION AND SETTLEMENT AGREEMENT

Mailed Date: October 4, 2002
Adopted Date: October 2, 2002

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APPEARANCES:

Paula Connelly, Esq., Denver, Colorado, for Public Service Company of Colorado;

David M. Nocera, Esq., Denver, Colorado, for the Staff of the Colorado Public Utilities Commission;

Stephen W. Southwick, Esq., Denver, Colorado, for the Colorado Office of Consumer Counsel;

Eric C. Guidry, Esq., Boulder, Colorado, for the Land and Water Fund of the Rockies;

Ronal W. Larson, PhD., Golden, Colorado, for the Colorado Renewable Energy Society; and

Jeffrey G. Pearson, Esq., Denver, Colorado, for GE Wind Energy, LLC.

I. BY THE COMMISSION

Procedural Background

1. On August 21, 2002, Public Service Company of Colorado (PSCo) filed an application seeking Colorado Public Utilities Commission (Commission) approval of a Wind Energy Supply Agreement (WESA) between it and GE Wind Energy, LLC (GE). The application also seeks Commission approval of PSCO's proposed rate recovery concept to recover the costs of the WESA. On August 21, 2002, PSCo also filed a Motion for Expedited Consideration of the Application along with its direct testimony and exhibits.

2. Timely interventions of right were filed in this matter by the Staff of the Commission (Staff) and by the Colorado Office of Consumer Counsel (OCC). Petitions for Leave

to Intervene were filed by Holy Cross Energy (Holy Cross), the Colorado Renewable Energy Society (CRES), and the Land and Water Fund of the Rockies (LAW Fund).

3. On September 10, 2002, we granted PSCo's Motion for Expedited Consideration, and assigned this matter to an Administrative Law Judge (ALJ) with instructions to conduct a hearing as soon as possible consistent with the requirements of due process and to rule on pending motions for intervention. *See,* Decision No. C02-1005. By that decision, we also found that the due and timely execution of our functions would require us to issue an initial decision in this matter pursuant to the provisions of § 40-6-109(6), C.R.S.

4. The ALJ held a prehearing conference on September 18, 2002. As a preliminary matter, the Stipulation filed by PSCo and Holy Cross on September 13, 2002, relating to the scope of Holy Cross's intervention, was granted. The written Petitions for Leave to Intervene filed by CRES and the LAW Fund and the oral request for intervention submitted by GE were also granted. Decision Nos. R02-1035-I and R02-1054-I memorialized the procedural schedule established by the ALJ. Among other things, it included a provision for the filing of written comments by interested members of the public and established hearing dates on September 26, 27, and 30, 2002.

5. On September 25, 2002, the parties advised the ALJ telephonically that a settlement was imminent and requested an opportunity to submit a written settlement agreement by noon of the next day. That request was granted with the proviso that the matter would proceed to hearing on the afternoon of September 26, 2002, in the event a settlement agreement was not timely filed. The parties were also advised that a hearing in connection with any settlement agreement would likely be held on September 27, 2002, commencing at 1:30 p.m.

6. The parties filed a Stipulation and Settlement Agreement (Stipulation) in accordance with the filing deadline set forth above. The Stipulation constitutes a negotiated settlement designed to resolve all contested issues in this matter.

7. The ALJ conducted a hearing in connection with the Stipulation on September 27, 2002. Testimony in support of the Stipulation was presented by Mr. David Eves and Mr. James F. Hill on behalf of PSCo; Mr. Saeed Barhaghi on behalf of Staff; Dr. P. B. Schechter on behalf of OCC; and Mr. John M. Nielsen on behalf of the Law Fund. Mr. Larson represented that CRES also supported the Stipulation. The prefiled testimony of PSCo witnesses Gary A. Swarts and James F. Hill and GE witness Robert H. Gates were marked as Exhibits 1, 2, and 3, respectively, and were admitted into evidence pursuant to a

stipulated agreement between the parties.[1] The Stipulation was marked as Exhibit 4 and was also admitted into evidence. Administrative notice was taken of § 40-3.2-102, C.R.S., and Decision No. C02-295.

8. The City of Boulder, the Arkansas River Power Authority and the Lamar Utilities Board submitted timely written public. Each of the three commenters strongly support the wind project underlying the WESA.

II. FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DISCUSSION

A. PSCo's 1999 Integrated Resource Plan and the Lamar Wind Facility.

By Decision No. C01-295, Docket No. 99A-549E, we approved Phase II of PSCo's 1999 Integrated Resource Plan (IRP) and found that a bid submitted by Enron Wind Development Corp. (Enron Wind) for wind power to be produced at a 162-megawatt wind farm to be constructed near Lamar, Colorado, should be added to PSCo's preferred resource plan. We found that the addition of this resource would likely lower the cost of electricity for Colorado's ratepayers and, therefore, directed

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[1] Mr. Swarts is a Purchased Power Analyst for Xcel Energy Services, Inc.; Mr. Hill is a Resource Planning Analyst for the same entity; and Mr. Gates is a Senior Vice-President for GE. Mr. Swarts' testimony includes a copy of the WESA (Exhibit GAS-2). Mr. Hill's testimony includes a comparative analysis of the WESA with the original bid for the Lamar wind project submitted by Enron Wind Development Corp. and an analysis of the estimated cost savings resulting from the addition of the WESA to PSCo's 1999 Integrated Resource Plan (Exhibit JFH-2). Mr. Gates' testimony was accompanied by Exhibits RGH-1 and RGH-2.

PSCo to enter into good faith contractual negotiations with Enron Wind designed to result in an agreement for the acquistion of wind power from the Lamar facility. In our decision, we recognized that PSCo should be granted an opportunity to recover all the costs associated with such power purchases and that it could propose a specific cost recovery mechanism once it finalized a power purchase contract. By this application, PSCo seeks our approval of the proposed WESA between it and GE in connection with the purchase of wind power to be produced by the Lamar facility. It also seeks our approval and confirmation of an adjustment clause to its retail electric rates that would allow it to to recover all the costs of the WESA.

B. The WESA and PSCo's Proposed Rate Recovery Mechanism.

1. Mr. Swarts' testimony chronicles the history of PSCo's negotiations for the purchase of wind power at the Lamar facility, first with Enron Wind and then with GE. Those negotiations commenced at about the time the Commission issued Decision No. C01-295 in March 2001 and ultimately resulted in an agreement between PSCo and GE as set forth in the WESA. In the interim, Enron Wind filed for Chapter 11 bankruptcy protection. This resulted in the sale of its wind manufacturing, construction, maintenance, and project development assets to GE in May 2002. In addition, the United States Congress extended the federal production tax credits (PTC), upon which successful

development of the Lamar project depended, through December 31, 2003.[2] PSCo has asked that we approve the WESA and the requested rate recovery mechanism by October, 1, 2002, in order to allow GE sufficient time to bring the Lamar facility on line prior to the current expiration date of the PTCs.[3]

2. With certain exceptions, the WESA provides for PSCo to pay only for wind energy actually delivered to it by the Seller. The energy rate is $0.03261/kWh, adjusted annually by an inflation adjustment mechanism. The energy contracted for is limited to 660 GWh in any year based on the facility having an installed nameplate rating of 162 MW.[4] If the facility produces more than that amount, PSCo may purchase excess energy for a rate equal to 50 percent of the above rate. Among other security provisions, the WESA requires the Seller to maintain a security fund in the amount of $4.86 million. The fund can be tapped by PSCo to cover replacement power costs in the event the

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[2] Federal production tax credits provide the owner of a wind facility a tax credit per kilowatt-hour of produced wind energy. This assists producers of wind energy to offer a price that is competitive with other generation resources. In order to qualify for such tax credits, a wind facility must be in production before the deadline set by federal law.

[3] Mr. Gates' testimony describes the Lamar facility and the construction timetable for its construction. He indicates that the facility will probably be sold to American Electric Power Company (AEP) which will maintain and operate it. Therefore, GE and/or AEP are referred to in the WESA and in this decision as the "Seller".

[4] While it is anticipated that the facility will have a nameplate rating of 162 MW, the WESA contains a provision that will allow a facility with a nameplate rating of not less than 60MW.

Seller fails to operate in accordance with the WESA. The WESA also provides for the "pass-through" of monthly facilities charges pursuant to a separate Interconnection Agreement.[5]

3. The exception to the general principle that PSCo will pay only for wind energy actually delivered to it by the Seller relates to generation that cannot be delivered as a result of transmission constraints.[6] The WESA obligates PSCo to limit generation at facilities it owns or controls to the extent that doing so will allow all energy produced by the Lamar facility to be delivered to PSCo. If PSCo does not limit dispatch when a transmission constraint occurs which could have been eliminated by such a dispatch limitation, it will pay the Seller for energy that was not able to be delivered at the contract payment rate plus an additional amount equal to the value of PTCs lost on the energy not delivered. PSCo is not obligated to pay the Seller for energy that could not be delivered due to transmission constraints when such constraints could not be alleviated by controlling generation dispatch.

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[5] The Interconnection Agreement will set forth the terms under which the Lamar facility will be connected to PSCo's system and is still being negotiated. It must be approved by the Federal Energy Regulatory Commission (FERC). At hearing Mr. Eves clarified that the monthly facilities charge required to cover the interconnect costs will be paid by PSCo throughout the term of the WESA.

[6] The parties expect transmission constraint problems to be short-lived due to the anticipated completion of the Midway-Smoky Hill transmission line in 2005.

Section 6.1 of the WESA sets forth these "take or pay" provisions and Exhibit G of the WESA sets forth the methodology for calculating the amount of energy not delivered during a transmission constraint period.

4. PSCo witness Hill conducted two analyses of the WESA as contained in Exhibit JFH-2 of his pre-filed testimony. The first compared the WESA with the original bid submitted by Enron Wind in connection with PSCo's 1999 IRP. That analysis showed the WESA to be $1.1 million less expensive (1999 net present value) than the original Enron Wind bid over its 15-year term. Since that amount represents only 0.8 percent of the total cost of the WESA, Mr. Hill concluded that the WESA is economically equivalent to the original Enron Wind bid. The second analysis estimated the cost savings associated with adding the WESA to PSCo's 1999 IRP preferred portfolio. Using updated PROSCREEN modeling assumptions and the ancillary cost estimate provided by the LAW Fund in the 1999 IRP, this analysis indicates that adding WESA to PSCo's 1999 IRP preferred portfolio results in a net savings of $6.9 million (1999 net present value) over the life of the agreement.

5. Citing the language in Decision No. C01-295 wherein we indicated that PSCo should be given the opportunity to fully recover all costs associated with the power purchases from the Lamar facility, PSCo requests that we confirm that it

be allowed to recover all WESA costs from retail ratepayers.[7] It proposes to do so under the Electric Commodity Adjustment (ECA) mechanism proposed in its pending Phase I rate case (Docket No. 02S-315EG) or the equivalent of such a mechanism.

C. The Stipulation.

1. The two primary issues disputed in this proceeding involved the "take or pay" provisions in the WESA and the manner in which the costs incurred by PSCo under the WESA are to be recovered.

2. With regard to the "take or pay" issue, Staff and OCC took the position that PSCo should bear the risk of any additional cost of "backing down" lower cost generation in order to accept wind energy from the Lamar facility when such "backing down" is due to transmission constraints. They are concerned that power from non-wind generation that may be curtailed under these provisions of the WESA may be less expensive than wind energy from the Lamar facility. In order to resolve this issue, GE Wind has agreed to reduce the contract payment rate set forth in the WESA by $0.10 per megawatt-hour during the first two

[7] Including payments for available energy not delivered to it due to transmission constraints and the "pass-through" costs for monthly facilities charges.

years of operation of the Lamar facility.[8] The parties believe that this rate reduction will mitigate the potential costs to PSCo and its ratepayers caused by the "take or pay" provisions in the WESA during the anticipated two-year period when transmission constraints are most likely to occur.[9]

3. With regard to the cost recovery issue, the parties disagreed about whether PSCo's retail customers should pay for all costs incurred under the WESA or whether these costs should be shared by PSCo's wholesale customers. As a related issue, Staff and OCC contended that it was not appropriate to include interconnection costs arising under the Interconnection Agreement as recovery costs since they were not modeled and presented to us for approval during PSCo's 1999 IRP.

4. The parties propose to resolve the cost recovery issue by allowing PSCo to fully recover its prudently-incurred costs under the WESA through an adjustment clause on retail rates until such time as PSCo obtains approval from the Federal Energy Regulatory Commission (FERC) to include a portion of such

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[8] This reduction is to be accomplished through an amendment to the WESA. At the hearing held in connection with the Stipulation, PSCo and GE agreed to attempt to file such an amendment prior to the issuance of our initial decision in this matter. Such an amendment was filed on October 2, 2002.

[9] Based on a confidential study conducted by PSCo, the parties believe that the total amount of this rate reduction will be substantially more than the likely cost to ratepayers under the "take or pay" provisions of the WESA.

costs in PSCo's wholesale rates.[10] In this regard, PSCo has agreed to apply to FERC for such approval no later than six months after we issue a final order in Docket No. 02S-485E relating to PSCo's Air Quality Improvement Rider. Further, it has agreed to make a diligent, good faith effort to persuade FERC to approve the recovery of a portion of the WESA costs from wholesale ratepayers. Its failure to make such an effort will result in the portion of WESA costs it would have recovered from wholesale customers to be no longer recoverable from retail customers. Until FERC approval is received, PSCo would be entitled to recover 100 percent of WESA costs from its retail ratepayers.

D. Commission Decision.

1. We find the Stipulation to be in the public interest. In Decision No. C01-295 approving Phase II of PSCo's IRP we added the wind energy bid to PSCo's preferred resource plan based solely on our finding that the acquisition of the Lamar wind facility would likely lower the cost of electricity for Colorado's ratepayers. The uncontested pre-filed testimony of PSCo witness Mr. Hill demonstrates that the WESA is still an economic purchase for PSCo and will result in $1.1 million more savings than would have been provided by the original Enron Wind

[10] Under the Stipulation the Staff and OCC have agreed to withdraw their objections to PSCo's recovery of interconnection costs.

bid we approved, and $6.9 million in net savings under current modeling parameters. Mr. Hill's testimony is cited on page 9 of the Stipulation.[11]

2. We find that the Stipulation is a just and reasonable resolution of the disputed issues of the WESA application. The principle disputed issues were the transmission constraints discussed in Section 6.1 of the WESA and PSCo's cost recovery of WESA costs. Other issues addressed in the Stipulation or at the hearing include: interconnection costs, the timing of PSCo's application to FERC, reporting requirements, the calculation of the reduced Contract Energy Payment, and availability of the "Amendment" to the WESA addressing issues pursuant to the Stipulation.[12]

3. The first principle disputed issue concerned the transmission constraints discussed in Section 6.1 of the WESA. In our original decision we gave minimal weight to the potential infrastructure impacts of the Lamar facility because those transmission constraints were limited to a 2-year period during the 15-year life of the contract. We also found that the IRP proceeding under Docket No. 99A-549E did not provide the

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[11] At the Hearing Mr. Hill clarified that both of his economic analyses included $1.892 million of interconnection costs that were not considered in the bid evaluation presented to the Commission in PSCo's 1999 IRP. Transcript September 27, 2002, p. 59 ll 21-25.

[12] *See* footnote 7.

Commission a thorough analysis of the actual likelihood of a transmission constraint occurring. In the Stipulation the parties conclude that the hours during which non-wind PSCo-controlled generation would be likely to be curtailed are few; and that the cost differential in those hours between energy actually delivered under the WESA and non-wind generation "backed down" is on the order of a few tens of thousands of dollars, total, over the two years in question. In the Stipulation the parties estimate that GE's agreement to accept a reduced Contract Energy Payment over the first two years of commercial operation will have a value of approximately $106,000.[13] We find this is likely to eliminate any potential adverse impacts on ratepayers due to constrained transmission.

4. In addition to the stipulated terms, we find that PSCo should report to the Commission as a part of its cost recovery filing all costs for energy it does not receive

[13] As a point of clarification on page 12 the Stipulation provides that the Contract Energy Payment Rate of $0.03261/kWh be reduced by $0.10 per mWh ($0.0001/kWh). At the hearing, Mr. Eves clarified that the $0.10/mWh reduction is to be applied after the contract energy payment rate is adjusted for inflation. Transcript, September 27, 2002, p. 42

pursuant to section 6.1 of the WESA.[14] PSCo shall include the amounts paid under section 6.1 of the WESA, and a detailed explanation of why PSCo did not reduce other generation to accommodate energy from the Lamar facility, for each occurrence.[15]

5. The second principle issue of contention relates to PSCo's request for full cost recovery from retail ratepayers of all payments for wind energy under the WESA. The Stipulation explains that the parties disagree about whether retail customers should pay for all the wind energy or whether this expense should be shared with PSCo's wholesale customers. The Stipulation resolves this issue by providing that PSCo shall be entitled to recover from retail customers 100 percent of its prudently incurred expenses under the WESA until such time as it obtains wholesale rate approval from the FERC. Such approval would enable PSCo to include recovery of a portion of the WESA expenses in its wholesale rates (either base rates or an appropriate adjustment clause). We find this is a just and

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[14] Section 6.1 of the WESA deals with the "take or pay" issue discussed above. It requires PSCo to reduce other generation when necessary to resolve transmission constraints that would limit the receipt of energy from the Lamar facility. If PSCo chooses not to reduce other generation that could resolve a constraint, it must pay for that energy, plus an amount for foregone production tax credits. The WESA does not require PSCo to pay for energy from the Lamar facility that was curtailed due to transmission constraints that could not be reduced or eliminated by reducing other generation in the region that is within PSCo's control.

[15] At the hearing held in connection with the Stipulation, PSCo agreed to file such reports. Transcript, September 27, 2002, p.43, ll 14-16.

reasonable resolution of this issue. We note that PSCo is purchasing energy from the Lamar facility pursuant to our directive in Decision No. C01-295. In that decision we agreed with PSCo that it should be granted an opportunity to recover all of the costs associated with this purchase. Our decision here to allow PSCo to recover all costs from retail customers until it obtains approval from FERC is warranted in this extraordinary situation. It does not change the Commission's long-standing policy of allowing a utility the opportunity to recover from its retail customers only that portion of system costs allocated to the retail jurisdiction.

6. The Stipulation provides that PSCo is entitled to fully recover its prudently-incurred expenses under the WESA through an automatic adjustment clause on retail rates.[16] We find an adjustment clause to be an appropriate rate mechanism for recovery of the WESA expenses[17] including the monthly facility charge for interconnection.[18] Because the costs of the interconnection facilities will be recovered through a rate

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[16] Stipulation page 13, 4.c.

[17] WESA expenses include payment for contract energy, payment for undelivered energy pursuant to Section 6.1 of the WESA, and monthly facilities charges.

[18] Staff witness Barhaghi, transcript p. 68, expressed concern about recovering interconnection facilities costs through a cost adjustment. We agree with PSCo witness Eves, transcript pp 54-57, that, in this case, it is appropriate to recover the monthly facilities charge for interconnection through the adjustment clause so that ratepayers will cease paying these costs when the contract expires or is terminated.

adjustment clause, the costs of the interconnection facilities shall not be included in rate base for purposes of earnings tests and rate cases. Though PSCo states in its application that it is seeking approval of an adjustment mechanism, it did not propose a specific adjustment clause mechanism for our approval in this docket.[19] Therefore, if PSCo seeks to ensure timely recovery of WESA costs, it must take appropriate action (*e.g.,* addressing this issue in its pending rate case,[20] or submitting a new filing proposing a specific adjustment clause for cost recovery of the WESA expenses) in time to allow a final Commission decision on the filing before the anticipated commercial operation date of the Lamar facility. The Stipulation does not fully address the Commission's concerns related to recovery of costs from the wholesale jurisdiction. Under the Stipulation, PSCo agrees to file with FERC for wholesale rate recovery of a portion of WESA costs within six months of a final order in the Air Quality Improvement Rider (AQIR) proceeding that is currently before this Commission in Docket No. 02S-485E. At the hearing, Mr. Eves testified that the AQIR issues are quite similar, and that the AQIR case will

[19] For example, PSCo does not include details such as whether the term will be monthly or annual, whether forecast or actual costs will be used, whether a true-up mechanism will be used, and PSCo did not provide tariffs describing the details of the adjustment clause.

[20] We are not ruling, at this time, that new testimony by PSCo in the rate case will be admitted there.

likely be resolved in time to address the wholesale rates before December 31, 2003, the date the Lamar facility is expected to be operational. We agree that a combined WESA/AQIR FERC filing can best serve administrative efficiency, and we are not specifically aware of any issue that might delay the AQIR proceeding. However, we are concerned that delays in the AQIR proceeding could unnecessarily delay wholesale rate recovery beyond the intended commercial operation date of the Lamar facility.[21] Since retail customers will bear 100 percent of the costs until wholesale rate recovery is established, we find that the stipulated filing date based on the AQIR proceeding does not provide adequate certainty for wholesale rate recovery of WESA costs. Therefore, we direct PSCo to file with FERC for wholesale rate recovery of WESA costs no later than June 30, 2003.

[21] For example, the AQIR proceeding could extend to July 30, 2003, the final date for issuance of a Commission decision in that matter under § 40-6-111, C.R.S. Under the Stipulation, PSCo would not be required to make the FERC filing until six months later, *i.e.,* until January 30, 2004. It is unknown how long it would take the FERC to process such an application. Therefore, FERC approval of the wholesale rate request could occur well after the Lamar facility becomes operational.

III. ORDER

A. The Commission Orders That:

1. The Wind Energy Supply Agreement between Public Service Company of Colorado and GE Wind Energy, LLC,[22] with First Amendment to Wind Energy Supply Agreement, is approved; subject to the Stipulation and Agreement between Public Service Company of Colorado, GE Wind Energy, LLC, Staff of the Commission, the Colorado Office of Consumer Counsel, the Land and Water Fund of the Rockies, and the Colorado Renewable Energy Society; and subject to the additional requirements listed below. The Stipulation and Settlement Agreement between the parties dated September 26, 2002 is approved consistent with the above discussion. A copy of the Stipulation and Agreement is attached to this Decision as Appendix I, and a copy of the First Amendment to Wind Energy Supply Agreement is attached to this Decision as Appendix II, and both are incorporated herein for all pertinent purposes.

2. In addition to the stipulated terms, we order Public Service Company of Colorado to report to the Commission detailing costs incurred for energy it does not receive pursuant

[22] As indicated previously, the WESA may be entered into with, or transferred to, AEP.

to Section 6.1 of the Wind Energy Supply Agreement, consistent with the above discussion.

3. Public Service Company of Colorado's request to recover all prudently incurred costs under the Wind Energy Supply Agreement from retail customers pursuant to an adjustment clause is approved. However, we direct Public Service Company of Colorado to file with the Federal Energy Regulatory Commission for wholesale rate recovery of Wind Energy Supply Agreement costs no later than June 30, 2003.

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

5. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING October 2, 2002.

(S E A L)

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

POLLY PAGE

JIM DYER

Commissioners

CHAIRMAN RAYMOND L. GIFFORD
SPECIALLY CONCURRING.

IV. CHAIRMAN RAYMOND L. GIFFORD SPECIALLY CONCURRING:

A. I concur with the Commission's decision to approve the Wind Energy Supply Agreement (WESA) associated with the Lamar Wind Energy Project. The WESA is consistent with the Commission's decisions and assumptions in the 1999 Integrated Resource Plan (IRP), and thus meets the requirements of that decision. I write separately to emphasize that the Lamar project presents an opportunity to improve our evaluation of wind energy projects.

B. Gas costs and ancillary service cost assumptions predominated in the 1999 IRP. At the time, the Commission made educated guesses about future gas costs and ancillary service costs associated with the Lamar projects.

C. Gas costs are traditionally difficult to predict. But, such are the vagaries of regulatory guesstimating.

D. Where this Commission, and the parties, can increase their respective guesstimating abilities is in the area of ancillary service costs. I would encourage Public Service Company of Colorado and other parties to undertake a close study of the ancillary service costs of the Lamar facility. This will aid future decisionmaking when evaluating the place of wind energy in the Colorado generation portfolio, thus ensuring sounder decisions are made for Colorado ratepayers.

E. As the parties to this docket know, wind energy is intermittent and thus has different and greater ancillary service costs associated with it than other more traditional generation sources. A better handle on the nature and the extent of those costs will help us going forward in assessing the place of wind generation in Colorado's future.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CHAIRMAN RAYMOND L. GIFFORD

Commissioner

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BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF COLORADO

DOCKET NO. 02A-438E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF LAMAR WIND ENERGY SUPPLY AGREEMENT AND FOR THE RATE MECHANISM TO RECOVER THE COSTS OF THE AGREEMENT

STIPULATION AND SETTLEMENT AGREEMENT

Public Service Company of Colorado ("Public Service" or "Company"), GE Wind Energy, LLC ("GE Wind"), the Staff of the Colorado Public Utilities Commission ("Staff"), the Colorado Office of Consumer Counsel ("OCC"), the Land and Water Fund of the Rockies ("LAW Fund"), and the Colorado Renewable Energy Society ("CRES") (all the foregoing entities referred to, collectively, as the "Parties"[1]) hereby enter into this Stipulation and Settlement Agreement (the "Stipulation").

INTRODUCTION

Public Service filed its application (the "Application") in this docket on August 21, 2002. The Application sought two things: first, approval by the Commission of a Wind Energy Supply Agreement ("WESA"), submitted with the Application, under which Public Service would purchase and GE Wind would sell electric energy from a proposed 162-megawatt wind farm (the "Project") to be constructed near Lamar, Colorado; and, second, a formal assurance by the Commission that, so long as it prudently administered the WESA, Public Service would be

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[1] Holy Cross Energy is a party to this proceeding but has submitted a stipulation to the Commission indicating that it has intervened primarily to obtain copies of documents filed in this proceeding and that it will not actively participate in this proceeding. Consequently, this Stipulation is joined by all active parties to this docket.

entitled to recover from retail customers, through an adjustment clause to retail rates, 100% of all payments made under the WESA.

With the Application Public Service filed written testimony[2] and a Motion for Expedited Consideration. In response to the motion, the Commission assigned the Application to be heard on an expedited basis consistent with due process by Hon. Dale E. Isley, Administrative Law Judge.[3] The ALJ, in turn, conducted a pre-hearing conference (with all Parties except Holy Cross present), and set hearings in this matter for September 26 and 27, 2002.[4]

The Parties are now before the ALJ and the Commission seeking, in lieu of the scheduled contested hearing, forthwith approval, without any modification, of this Stipulation. The Stipulation is a negotiated settlement of all differences and disputes among the Parties on issues raised by or related to the Application. Part of the Stipulation will require Public Service and GE Wind to enter into a new amendment to the WESA (hereafter, the "Amendment"), to be explained below. The Stipulation calls on the Commission to grant expedited approval of (A) the WESA as filed, and as modified by the Amendment; and (B) full recovery by Public Service of all prudently-incurred expenses incurred under the WESA, as thus amended, with recovery coming initially from retail customers, but requiring Public Service to take certain steps to attempt to recover the wholesale jurisdictional portion of those payments from its wholesale

[2] The Parties ask that this testimony and all public comments be admitted as part of the official record for this docket and that it be available for reference as the ALJ and the Commission consider this Stipulation. *See* testimony of Public Service witness Gary A. Swarts, to which the WESA was attached as an exhibit; testimony of Public Service witness James F. Hill; and testimony of GE Wind witness Robert H. Gates.

[3] *See* Decision No. C02-1005 (September 10, 2002).

[4] By Decision No. R02-1023-I (September 13, 2002), the ALJ scheduled a pre-hearing conference in this matter for September 18, 2002. Following the pre-hearing conference on that date, the ALJ issued Decision No. R02-1035-I (September 19, 2002), which granted the requests to intervene of LAW Fund, CRES, Holy Cross and GE Wind; accepted a stipulation between Public Service and Holy Cross regarding the scope of Holy Cross participation; set hearings in this matter for September 26 and 27, 2002; and established procedures for pre-hearing discovery and filing of answer and rebuttal testimony.

customers. Finally, the Stipulation provides that, immediately on receipt of all the foregoing Commission approvals, Public Service and GE Wind will execute the WESA, which has not yet been signed, as well as the Amendment.

While no testimony other than that pre-filed by Public Service with the Application has been submitted in this docket, the Parties acknowledge that, were a contested hearing to be held, both Staff and the OCC would present evidence and testimony opposing certain provisions of the WESA as filed, and/or certain aspects of the Company's request in the Application for full recovery from retail customers of payments to GE Wind under the WESA. The LAW Fund and CRES would have presented testimony on the benefits of the Project. The Parties acknowledge that they have either participated in or been apprised of the substance of numerous discussions in which Staff, the OCC, CRES, and the LAW Fund have communicated the bases for their positions. Through a process of informal discovery, Staff, OCC, LAW Fund, CRES, and GE Wind have been provided by Public Service with various documents, and answers and explanations for various concerns and questions. The Parties represent that as a result of their discussions and of the exchange of documents and information that has occurred, they are able at this point to compromise positions they have asserted or would assert in this docket and reach a settlement.

THE DISPUTED ISSUES

Section 6.1 of the WESA. The principal issue of contention among the Parties has concerned section 6.1 of the WESA. Section 6.1 provides that if Public Service is unable to accept delivery of energy from the Project because of a transmission constraint that the Company can alleviate by "backing down" non-wind electric generation that the Company controls, Public Service will "back down" the non-wind generation in order to take all of the Project's wind

production[5]; or, if it does not, will nevertheless pay the Project for all energy the latter could have delivered at the time.

While the parties do not object to the inclusion of section 6.1 in the WESA, there is disagreement about the allocation of risk for payments made because of transmission constraints. The Parties' positions will be discussed in more detail, below.

Public Service Cost Recovery. The second issue of principal contention relates to the Company's request in the Application for full cost recovery from retail ratepayers of all payments for wind energy under the WESA. The Parties disagree about whether retail customers should pay for all the wind energy or whether this expense should be shared with the Company's wholesale customers. Their positions on these issues will also be discussed in more detail below.

DISCUSSION OF THE DISPUTED ISSUES

Section 6.1 of the WESA. The provision was intended by Public Service and GE Wind to address a potential temporary limitation on the Public Service transmission system to the south of Denver, specifically between Midway, which is south of Colorado Springs, and the southern suburbs of Denver.[6] The potential limitation is the result of the possibility that the power lines that connect Midway and south Denver at the present time lack the capacity, at certain peak usage times, simultaneously to transmit all of the power available from both the Project and from other power plants Public Service controls south of Denver.

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[5] Section 6.1 only applies to limitations of transfer capacity that Public Service can address by backing down generators other than the Project. Thus, it does not apply to certain power line outages. For example, if the power line to which the Project is directly interconnected at Lamar went down, no power at all could flow northward from that point. This would not be a situation Public Service could address by re-dispatching other power plants. The Project might simply have to forgo payment until the line was repaired.

[6] The transmission path discussed is sometimes referred to as one between Midway and Daniels Park, and sometimes as one between Midway and Smoky Hill. Both Daniels Park and Smoky Hill are substations in the southern Denver suburbs. To alleviate the potential transmission path constraint being discussed, Public Service originally intended to build a new line between Midway and Daniels Park. In fact, the current plan is for the new line to run from Midway to Smoky Hill.

Public Service plans to seek approvals for a new transmission line, from Midway to Smoky Hill, that would alleviate transmission constraints between Midway and the Denver area. In addition to seeking approvals and permits from the affected parties,[7] the Commission has required Public Service to apply to the Commission for a Certificate of Public Convenience and Necessity (CPCN). The current anticipated in-service date for the new transmission line is October 31, 2005. However, there is no guarantee that Public Service will be successful in obtaining all the permits necessary to build this line or that the CPCN and other permits will be granted in time to meet the projected October 2005 in-service date.

The Project is scheduled to be in commercial operation at the end of 2003. Thus, the potential constraint being discussed could affect energy deliveries from the Project for no more than two years, if Public Service is able to obtain a CPCN from the Commission and all required local land use permits on a timely basis and there are no other impediments to timely construction.

Public Service and GE Wind take the position that section 6.1 is consistent with the fact that the WESA, like many contracts for wind power, is a "delivery contract." Unlike other third-party power providers from whom Public Service purchases, the Project does not receive monthly capacity payments simply for being "on call," or available, to generate. The Project receives payment for the energy it delivers, exclusively. If the wind does not blow, and the Project cannot produce energy, it does not get paid. If the wind does blow, and it can produce energy, the Project desires to be paid for its energy.

GE Wind insisted on section 6.1 when it learned of the potential constraint on the Company's transmission system south of Denver, because of the financial reality that the Project

[7] Affected parties potentially include the counties of Arapahoe, Elbert, El Paso, and Lincoln, as well as the City of Aurora.

is paid only for deliveries, not for being "available" to deliver. Financing the Project could be impeded or made significantly more expensive if there were an open-ended possibility that the Project would be curtailed, even when the wind was blowing, because the transmission path northward from the Project was restricted. GE Wind therefore insisted that, at times when transfer capacity on the northward path is limited, where Public Service has other generation facilities it could back down or re-dispatch, that other Public Service generators should be curtailed. In recognition of the nature of wind energy supply contracts, its ability to re-dispatch other generation to relieve the expected constraint, and the project finance realities faced by GE Wind, Public Service agreed.

Public Service and GE Wind also take the position in this docket that section 6.1 is a reasonable response to the exigencies of the transmission path constraint south of Denver because the Commission was made aware of the constraint at the time the Commission required Public Service to enter into a purchase agreement with GE Wind's predecessor in interest, Enron Wind Development Corp. ("Enron Wind"). Enron Wind, it will be recalled, bid the Project into the supply-side solicitation component of the Company's 1999 Integrated Resource Planning process. Public Service declined to select the Project as a winning bid. The Commission ordered the Company, over its objections, to accept the project and proceed to contract negotiation. *See* Decision No. C01-295 (March 28, 2002) (hereafter, "1999 IRP Decision") in Docket No. 99A-549E—Phase II. In that decision, the Commission addressed the potential transmission constraint as follows:

> We conclude that potential transmission infrastructure impacts of the Lamar facility [the Project] should be given minimal weight in our decision. The Company introduced this concern in its rebuttal testimony. At the hearing, witness Eves testified that the Company's concerns regarding transmission constraints are focused on the two-year period 2003-2004, and for the area south

> of Denver from Midway to Daniels Park. Those constraints will be relieved beginning in 2005 once the Midway-Daniels Park transmission project is completed. Thus, the Company's concerns are effectively limited to a two-year period during the fifteen-year life of the proposed Lamar [Project] contract. Even for this two-year period, the evidence provided by the Company does not give us a good basis for determining the actual likelihood of a transmission constraint occurring.

1999 IRP Decision at page 43.

Staff and the OCC take the position that this language from the 1999 IRP Decision is no more than Commission recognition that Public Service expressed concern about the Midway-Denver transmission path. Staff and the OCC dispute that this language indicates the Commission in any way found Public Service's concern to be valid. Staff and the OCC also point out that this language does not in any way authorize Public Service and the Project to enter into a provision similar to section 6.1 of the WESA. Therefore, Staff and the OCC believe that Public Service should bear the risk of any additional cost of backing down lower-cost generation in order to accept wind energy, when that backing down is due to transmission constraints. Furthermore, Staff and the OCC believe that, prior to and subsequent to bringing potential transmission constraints to the Commission's attention in its 1999 IRP docket, there were steps that Public Service should have taken that, if taken, would have reduced or eliminated potential transmission constraints.

Staff and the OCC have raised the concern that it is possible that power from the non-wind generators that are curtailed under section 6.1 of the WESA due to transmission constraints, in order for Public Service to accept deliveries from the Project at peak times, may be less expensive than energy from the Project. Staff, the OCC, and the LAW Fund asked Public Service to estimate the number of hours in the years 2003, 2004 and 2005 that accepting energy deliveries from the Project might require Public Service to curtail non-wind generation sharing

the transmission path into Denver from the south. Staff, the OCC, and the LAW Fund asked that the cost of power from the curtailed non-wind generators be compared to the price paid by Public Service to the Project for wind-generated energy.

In response to these requests, Public Service prepared a confidential hourly analysis of the type requested for all 8,760 hours of each of three years—2003, 2004 and 2005. The Parties have reviewed and discussed this analysis at length. It shows that the hours during which non-wind Public Service-controlled generation would be likely to be curtailed are very few; and that the cost differential in those hours between Project energy actually delivered and non-wind generation "backed down" is on the order of a few tens of thousands of dollars, total, over the three years in question. However, both Public Service and the other Parties recognize that this analysis was not a sophisticated computerized modeling analysis and was, at best, a simplified spread-sheet analysis. In addition, all Parties recognize that the conclusions reached by the simplified spread-sheet analysis may be flawed because of the large number of unknown variables that must be assumed in order to perform the bottom-line calculations. Therefore, while the Parties have found this analysis useful to develop this Stipulation and Settlement, the Parties have agreed that the analysis should not be submitted to the Commission as part of this Stipulation.

All Parties agree that the Commission has determined that the Project produces system benefits. The pre-filed testimony of Public Service witness James F. Hill in this docket contains two economic analyses of the WESA. The first analysis compares the original Enron Wind bid terms with the terms of the WESA using the same PROSCREEN II modeling assumptions that

were used to evaluate the Enron Wind bid in the Company's January, 2001, final IRP filing.[8] This analysis shows that the WESA provides $1.1 million (NPV 1999) more savings than would have been provided by the original Enron Wind bid. These additional savings constitute approximately 0.8% of the payments under the WESA; Mr. Hill concludes that the WESA and the original Enron Wind bid are economically equivalent.

Mr. Hill also performs a second economic analysis in PROSCREEN II using updated modeling assumptions as of June, 2002, to determine whether the WESA is still an economic purchase for Public Service. In this analysis Mr. Hill also uses the LAW Fund assumptions of ancillary costs, and Mr. Hill includes $1.892 million in interconnection costs that were not considered in the bid evaluation presented to the Commission in Public Service's 1999 IRP. Mr. Hill concludes that using June, 2002, PROSCREEN modeling assumptions, and including interconnection costs, the Project will result in savings of $6,898,000 (1999 NPV). He concludes that passage of time during contract negotiations has not diminished the value of the WESA.

Staff and the OCC take the position that it would not be appropriate to include in rate base interconnection costs that were not modeled and presented to the Commission for its approval during Public Service's 1999 IRP.[9] This position is based upon the belief of Staff and the OCC that the original bid analysis should form the basis of any contractual agreement entered into by the Company. Adding costs at a later date undermines the net positive benefit to ratepayers and compromises the integrity of the IRP process.

Public Service takes the position that the interconnection costs included in Mr. Hill's analysis are properly included in the Company's cost of service and are recoverable from

[8] There is one exception. Mr. Hill's analysis uses the ancillary service costs associated with the Project that were sponsored by the LAW Fund in Public Service's 1999 IRP docket, *supra*. This is consistent with the Commission's directive in the 1999 IRP Decision.

[9] Because of the expedited nature of this procedure, Staff did not conduct an independent verification of Mr. Hill's analyses.

ratepayers. Public Service explains that the GE Wind interconnection costs were not modeled in the Company's 1999 IRP Report because the Company had not recommended the GE Wind project as part of its preferred portfolio.

The LAW Fund takes the position that approval of the WESA will provide significant economic benefits to ratepayers, as illustrated by the Commission's 1999 IRP Decision. In addition, the LAW Fund asserts that the Project will create additional benefits, including fuel diversity benefits, environmental benefits, and rural economic development benefits for southeastern Colorado. The LAW Fund's position is that the potential cost to ratepayers of the transmission constraint are minor compared to the sizeable economic and environmental benefits. The LAW Fund concurs with the OCC and Staff that there are steps that Public Service could have explored that may have reduced potential transmission constraints.

CRES is in support of the Staff, OCC, and LAW Fund positions.

Despite Mr. Hill's analyses, the Parties recognize that the operation of section 6.1 could still result in some costs from re-dispatch of Public Service-controlled non-wind generation that would have supplied energy at a lower price than the Project. The approach the Parties have adopted to compromise their positions is set forth after the immediately following discussion of the "full recovery" issue.

<u>Public Service Cost Recovery</u>. In its 1999 IRP docket, Public Service argued that, if it were required against its will to enter into a purchase agreement with the Project, it should also be entitled to full recovery of all payments for Project energy. The Commission responded as follows:

> We agree with the Company that it should be granted an opportunity to recover all the costs associated with power purchase from Lamar [the Project], especially since this purchase is pursuant to our directive in this decision. However, there is no need for us

> to specify the cost recovery mechanism here. This decision directs the Company to attempt to acquire the Lamar facility as part of its 1999 IRP. We now confirm that PSCo is entitled to an opportunity to recover the costs associated with any power purchases from Lamar.

1999 IRP Decision at page 44.

Public Service takes the position that in order to have an opportunity to fully recover the costs associated with any power purchases from the Project, Public Service needs confirmation from the Commission that it may pass on 100% of its prudently-incurred expenses under the WESA to retail customers through an automatic adjustment clause. Public Service argues that payments under the WESA are not in the test year under consideration in Public Service's pending rate case and therefore will not be reflected in base rates. Public Service further maintains that it cannot recover any portion of these payments from its wholesale customers under Public Service's current wholesale rates. Consequently, in order to have an opportunity for full cost recovery, as promised by the 1999 IRP Decision, Public Service has requested in its application that 100% of the WESA expenses be recovered from retail customers through an adjustment clause to retail base rates.

Staff and the OCC object to an open-ended recovery of all the WESA expenses from retail customers. Staff and the OCC maintain that wholesale customers should pay their allocated share of these expenses. Further, Staff and the OCC argue that Public Service should not be given a blank check for all payments under the WESA. Staff and the OCC maintain that Public Service is still required to administer the WESA and to otherwise conduct its business in a prudent manner and to be subject to cost disallowance if the Company fails to act prudently.

SETTLEMENT OF DISPUTED ISSUES

After significant hours of discussion and negotiation, the Parties have reached full settlement of all disputes that have arisen or could arise among them in this Docket. The Parties hereby stipulate as follows with respect to the Company's Application in this Docket:

1. To mitigate potential adverse impacts on ratepayers due to constrained transmission during the first two Commercial Operation Years (as defined in the WESA), GE Wind has offered to reduce the payments to which it would otherwise be entitled under the WESA, by an amount that the Parties agree is substantially higher than Public Service's simplified spread sheet estimate of the likely cost to ratepayers caused by the re-dispatch of southeastern Colorado generation to accept the wind energy due to the current insufficient transfer capability between Midway and Denver. GE Wind has agreed to accept a reduced Contract Energy Payment Rate (as defined in the WESA) for the first two Commercial Operation Years, and only for the first two Commercial Operation Years, such that the rate otherwise payable is reduced by $0.10 per megawatt-hour ("mWh"). Over the two years the Contract Energy Payment Rate reduction is in effect, given the estimated average facility annual production of 534,000 mWh, GE Wind would receive approximately $106,000 less than it would have been paid without this stipulated reduction, depending on wind and other conditions. To accomplish this payment reduction, the WESA as filed with the Commission would remain unchanged, except that GE Wind and Public Service, upon approval of this Stipulation, agree to enter into an Amendment to the WESA to reflect this two year reduction in the Contract Energy Payment rate.

2. The Parties agree that the reduced Contract Energy Payment rate will be accepted as "liquidated damages" to mitigate potential costs to Public Service and its ratepayers caused by

the re-dispatch of generation under Article 6.1 of the WESA, during the first two Commercial Operation Years under the WESA. With the Amendment to the WESA required by paragraph 1, the Parties withdraw all objections to the WESA and support Commission approval of the WESA, as amended.

3. All Parties withdraw their objections to the Company's recovery of the interconnection costs of the GE Wind Project.

4. In its Application, Public Service seeks 1) Commission approval of the WESA and 2) recovery from retail customers through an automatic adjustment clause of all prudently-incurred expenses under the WESA. By entering into this Stipulation, no party is waiving its right to contest in a future Commission proceeding the prudence of any action taken by Public Service, other than the actions specifically contemplated by this Stipulation. The actions specifically contemplated by this Stipulation are:

a. Public Service will sign and be bound by the WESA and the Amendment required by this Stipulation.

b. The two year reduction in Contract Energy Payment Rate set forth in the Amendment will serve as a "liquidated damage" remedy to mitigate prudently incurred increased expenses (if any) passed through to retail ratepayers under the WESA due to re-dispatch of facilities during the first two Commercial Operation Years of the Project.

c. Public Service is entitled to fully recover its prudently-incurred expenses under the WESA through an automatic adjustment clause on retail rates, but Public Service must seek recovery of a portion of these expenses from Public Service's wholesale customers in accord with paragraph 4, below.

5. Public Service shall be entitled to recover from retail customers 100% of its prudently-incurred expenses under the WESA until such time as Public Service obtains approval from the Federal Energy Regulatory Commission ("FERC") to include recovery of a portion of the WESA expenses in Public Service's wholesale rates (either base rates or an appropriate adjustment clause). Public Service agrees to apply to FERC for such approval no later than six months after the Commission's final order with respect to Public Service's Air Quality Improvement Rider, pending before the Commission in Docket No. 02S-485E. Public Service further agrees to make a diligent, good faith effort to persuade FERC to approve recovery of WESA expenses from Public Service's wholesale customers. If Public Service fails to make such timely application to the FERC or to expend such diligent, good faith effort, then the portion of WESA expenses that would have been recoverable from wholesale customers shall no longer be recoverable from retail customers. All revenues that Public Service receives from its wholesale customers for WESA expenses shall be credited as an offset to the retail adjustment clause recovering the WESA expenses.

6. Public Service and GE Wind agree to execute the WESA and the Amendment contemplated by this Stipulation immediately upon Commission approval of this Stipulation.

7. All parties support expedited approval by the Commission of the Company's Application, as amended by this Stipulation, with the objective of obtaining such approval by October 1, 2002, or as soon thereafter as possible.

8. All parties hereby stipulate that any objections they might have had to the WESA or Public Service's Application, as modified by this Stipulation, are withdrawn and that they support this Stipulation and Settlement Agreement as being in the public interest.

REQUEST FOR COMMISSION APPROVAL

The Parties agree that this Stipulation and Settlement Agreement shall be filed as soon as possible with the Commission for Commission approval. This Stipulation and Settlement Agreement shall not become effective until the issuance of a final Commission order approving the Stipulation and Settlement Agreement, which order does not contain any modification of the terms and conditions of this Stipulation and Settlement Agreement which is unacceptable to any of the Parties. In the event the Commission modifies this Stipulation and Settlement Agreement in a manner unacceptable to any Party, that Party shall have the right to withdraw from this Agreement and proceed to hearing on some or all of the issues that may be appropriately raised by that Party in this docket. The withdrawing Party shall notify the Commission and the Parties to this Agreement by e-mail within one business day of the Commission modification that the Party is withdrawing from this Agreement and that the Party is ready to proceed to hearing; the e-mail notice shall designate the precise issue or issues on which the Party desires to proceed to hearing (the "Hearing Notice"). The withdrawing Party shall file with the Commission a formal notice, containing the same information as the e-mail Hearing Notice on the same day that the withdrawing Party sends the e-mail Hearing Notice. The withdrawal of a Party shall not automatically terminate this Agreement as to any other Party, but any other Party may also withdraw upon receiving another Party's Hearing Notice by serving the Commission and the other Parties with its own Hearing Notice by e-mail within one business day of the date of the Hearing Notice from the first withdrawing Party. A Party who properly serves a Hearing Notice shall have and be entitled to exercise all rights the Party would have had in the absence of the Party agreeing to this Stipulation and Settlement Agreement. Hearing shall be scheduled on the issues designated in the Hearing Notices of the withdrawing Parties as soon as practicable.

The negotiations or discussions undertaken in conjunction with the Stipulation and Settlement Agreement shall not be admissible into evidence in this or any other proceeding, except as may be necessary in any proceeding to enforce this Stipulation and Settlement Agreement.

Approval by the Commission of this Agreement shall constitute a determination that the Agreement represents a just, equitable and reasonable resolution of all issues that were or could have been contested among the Parties in this proceeding.

The Parties to this Agreement state that reaching agreement in this docket as set forth in this Agreement by means of a negotiated settlement is in the public interest and that the results of the compromises and settlements reflected by this Agreement are just, reasonable and in the public interest.

Except as otherwise specifically agreed in this Agreement, nothing contained herein shall be deemed as constituting a settled practice or legal precedent for the purposes of any other proceeding that does not involve this Stipulation and Settlement Agreement.

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

DATED this 26th day of September, 2002.

FIRST AMENDMENT TO
WIND ENERGY SUPPLY AGREEMENT
BETWEEN

____
AND
PUBLIC SERVICE COMPANY OF COLORADO

This First Amendment to Wind Energy Supply Agreement (the "First Amendment") is dated as of _____________, 2002, between ______________ ("Seller") and Public Service Company of Colorado ("PSCo"). All capitalized terms in this First Amendment shall have the same meaning as provided in the WESA, as herein defined.

WHEREAS, Seller and PSCo are entering into a Wind Energy Supply Agreement (the "WESA") as of the date hereof; and,

WHEREAS, on August 21, 2002, PSCo formally requested CPUC Approval (as defined prior to this First Amendment) in CPUC Docket No. 02A-438E; and,

WHEREAS, proceedings in CPUC Docket No. 02A-438E resulted, on September 26, 2002, in the execution and filing with the CPUC of a certain Stipulation and Settlement Agreement (the "Stipulation") among the active parties to the said docket; and,

WHEREAS, the Stipulation settled various issues that arose between and among the aforesaid active parties to CPUC Docket No. 02A-438E, and as part of the Stipulation it was agreed that the WESA should be amended; and,

WHEREAS, Seller and PSCo now desire to amend the WESA in furtherance of the Stipulation; and,

WHEREAS, if the CPUC approves the Stipulation, approves the WESA and approves this First Amendment, the Parties desire to deem the Commencement Condition of obtaining CPUC Approval as set forth in Section 2.2 of the WESA satisfied, and desire to provide that execution of an acceptable Interconnection Agreement between them shall be another Commencement Condition and desire to adjust the Contract Energy Payment Rate set forth in Section 8.2.

NOW THEREFORE, in recognition of their undertakings and agreements in the Stipulation and in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Amendment of Section 1.18 (Definition of "CPUC Approval"). Section 1.18 of the WESA is hereby amended to read as follows:

> "CPUC Approval" means a final, written order by the CPUC in CPUC Docket No. 02A-438E approving (i) the WESA, (ii) the First

Amendment to the WESA, and (iii) the terms and provisions of that certain Stipulation and Settlement Agreement dated September 26, 2002, entered into by PSCo, GE Wind Energy, LLC, and other active parties to CPUC Docket No. 02A-438E, and filed in CPUC Docket No. 02A-438E on September 26, 2002.

2. Amendment of Section 2.2 of the WESA ("Commencement Conditions"). Section 2.2 of the WESA is hereby amended to read, in its entirety, as follows:

2.2 Commencement Conditions.

(A) This WESA shall not be effective until all of the following Commencement Conditions ("Commencement Conditions") have been satisfied or waived: (i) CPUC Approval; (ii) an Interconnection Agreement shall have been executed by the Parties; and (iii) the Commencement Condition set forth in Section 2.2(C), below.

(B) The Parties hereto agree that CPUC Approval required by Section 2.2(A) (i) has been obtained.

(C) Upon receipt of the interconnection study of the transmission costs associated with interconnecting Seller's Facility to PSCo's transmission system, Seller shall evaluate whether Seller will elect to mitigate transmission costs, if any, in excess of the transmission costs assumed in the evidence presented by PSCo to the CPUC in Docket No. 02A-438E. Seller shall provide to PSCo a copy of the interconnection study and Seller's proposed mitigation plan, if any. PSCo shall determine, in its sole discretion, whether the transmission costs identified in the interconnection study, which cannot be eliminated by Seller, are materially different from the transmission costs assumed in the evidence presented by PSCo to the CPUC in Docket No. 02A-438E. PSCo shall notify Seller within 10 days of receiving Seller's plan of PSCo's determination. If PSCo determines that the transmission costs are not materially different, then this Commencement Condition shall be deemed satisfied. If PSCo determines that the transmission costs are materially different, the Parties agree to seek immediate, expedited approval from the CPUC of full cost recovery of these costs. If the CPUC approves such recovery by PSCo of these costs, then this Commencement Condition shall be deemed satisfied.

3. Amendment to Section 8.2 of the WESA ("Contract Energy Payment Rate"). Section 8.2 of the WESA is amended to be 8.2(A) and a new 8.2(B) is hereby added to read as follows:

(B) The foregoing provisions of Section 8.2(A) to the contrary notwithstanding, during the first and second Commercial Operation

Years, and during the first and second Commercial Operation Years only, the Contract Energy Payment Rate for Contract Energy, calculated in dollars per kilowatt-hour ("$/kWh") pursuant to Section 8.2(A), shall be reduced by $0.0001/kWh.

4. No Other Amendment. Except as expressly amended hereby, the terms and provisions of the WESA shall remain in full force and effect.

5. Counterparts. This First Amendment may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the date first stated above.

____________________________	Public Service Company of Colorado
By:_________________________	By:___________________________ Paul Bonavia, Vice President