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

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**IN THE MATTER OF THE APPLICATION OF )  
PUBLIC SERVICE COMPANY OF COLORADO )  
FOR APPROVAL OF A POWER PURCHASE )  
AGREEMENT BETWEEN PUBLIC SERVICE )  
COMPANY OF COLORADO AND DENVER )  
WATER BOARD )**

**Docket No. 06A-292E**

**STIPULATION**

Public Service Company of Colorado ("Public Service" or the "Company"), the Staff of the Colorado Public Utilities Commission ("Staff"), and the City and County of Denver acting by and through its Board of Water Commissioners (the "Denver Water Board") hereby stipulate and agree that the Commission should approve the Power Purchase Agreement between Public Service and the Denver Water Board, dated March 22, 2006 (the "New DWB PPA").<sup>1</sup> The Company, the Staff and the Denver Water Board are the only three Parties participating in this Docket.

**BACKGROUND**

On May 15, 2006, Public Service filed an Application in this Docket requesting approval of the New DWB PPA. Public Service also filed the Direct Testimony and Exhibits of Karen T. Hyde in support of the Application. In the Application and in Ms. Hyde's testimony, Public Service explained that the Company currently provides electric service to numerous Denver Water Board filter plants and pumping stations under the Electric Service Agreement dated July 25, 2000 and the Company's real time pricing

<sup>1</sup> In conducting its review of the New DWB PPA, Staff expressed concern that Exhibits C and G were not attached to the contract submitted to the Commission for approval. Public Service and Denver Water Board represent to the Commission that the exhibit lettering scheme in the New DWB PPA was intended to parallel the exhibit lettering scheme in the Current DWB PPA, but in the New DWB PPA there is no need for an Exhibit C or an Exhibit G. Therefore, Exhibits C and G were intentionally omitted by the Parties to the New DWB PPA.

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tariff provisions set forth as Special Contract Service SCS-6 (the "ESA"). In addition, Public Service currently buys the electric energy generated at five hydroelectric facilities owned and operated by Denver Water Board at 90% of the real time price for energy under a Power Purchase Agreement dated July 25, 2000 (the "Current DWB PPA"). Both of these agreements were approved by the Commission in Docket No. 01A-257E by Decision No. R02-277 (March 7, 2002). That Commission decision approved a Stipulation Requesting Approval of Application, among the Company, the Staff of the Colorado Public Utilities Commission and the Denver Water Board (the "2002 Stipulation"). Under the 2002 Stipulation and in accord with the terms of the agreements, the ESA, the Current DWB PPA, and the 2002 Stipulation all terminate on March 31, 2007.

Because of the impending expiration of the current long-term contract under which Public Service currently buys output from five Denver Water Board hydroelectric facilities, Public Service and Denver Water Board negotiated a new contract to replace the Current DWB PPA, which is the New DWB PPA at issue in this Docket No. 06A-292E. Public Service also seeks a new arrangement because the Denver Water Board is the only remaining real time pricing program customer, and Public Service would like to eliminate the real time pricing program. If approved by the Commission, the New DWB PPA would take effect April 1, 2007. Public Service and Denver Water Board further agreed that when the ESA terminated on March 31, 2007, Denver Water Board would no longer receive electric service for its filter plants and pumping stations under Special Contract Service, SCS-6; instead, Denver Water Board would receive retail service under the Company's Primary General Service (PG) tariff.

The details of how the New DWB PPA and retail service under the PG tariff differ from the Current DWB PPA and retail service under the SCS-6 tariff are set forth in the Company's Application and the Direct Testimony and Exhibits of Karen T. Hyde. In general, both the current contracts (the ESA and the Current DWB PPA) and the new contracts (the PG tariff and the New DWB PPA) seek to strike an arrangement between the Company and the Denver Water Board that reflects both the Company's cost of providing retail service to the unique loads of the Denver Water Board and the value provided to the Company by the multiple hydroelectric facilities operated by Denver Water Board in connection with its integrated water delivery system. Both the Current DWB PPA and the proposed New DWB PPA involve mechanisms that cause the price for both energy sales to Denver Water Board and power purchases from Denver Water Board to move in concert with one another, such that if Public Service's rates for electric service increase then so does the price of power acquired under the power purchase agreement.

### **STIPULATION**

Public Service, the Staff, and the Denver Water Board all agree that the New DWB PPA approximates the benefits received by each party under the Current DWB PPA and the ESA and the public interest is not harmed by Commission approval of the New DWB PPA. However, each of the Parties emphasizes different reasons for its support of this contract.

The reasons for supporting approval of the contract are set forth by each Party as attachments to this Stipulation. These attachments should be viewed by the Commission as statements that are submitted in summary of, or in lieu of, testimony.

Because each of the Parties has reached the conclusion that the contract between Public Service and the Denver Water Board should be approved by the Commission, no Party believes it necessary to continue to dispute these issues or to resolve the differences in outlook among the Parties. That being said, by filing this Stipulation with its Attachments, no Party is necessarily agreeing with the positions articulated by any other Party. In fact, Public Service specifically disagrees with statements made by Staff in its Attachment, and Staff specifically disagrees with statements made by Public Service in its Attachment. Notwithstanding the foregoing, the Parties have all reached the same conclusion: the Commission should approve the contract.

#### **GENERAL TERMS**


The Parties agree to support Commission approval of the contract between Public Service and the Denver Water Board at any hearing held by the Administrative Law Judge on this Stipulation. The Parties agree that the prefiled testimony of Public Service and this Stipulation with its Attachments shall be submitted into evidence, without objection, either at an evidentiary hearing held on this Stipulation or on the basis of these written pleadings if no hearing is held. If the Commission rejects this Stipulation, or modifies it in any way that a Party finds unacceptable, this Stipulation shall be null and void and the disappointed Party retains the right to a hearing on Public Service's Application. The disappointed Party shall notify the other Parties of its intent to void the Stipulation and to proceed to hearing, by email, within three business days of the Commission order that rejects or modifies this Stipulation. The Parties agree to cooperate to schedule the hearing on Public Service's Application at the earliest possible time.

## CONCLUSION

For the various reasons cited by each of the Parties in the Attachments to this Stipulation, the Parties all view the New DWB PPA to be a contract that does not harm the public interest, and all three Parties agree that the Commission should approve the New DWB PPA. The Parties agree to submit this Stipulation to the Commission and to support approval of the Company's Application and of the New DWB PPA.

Dated this 21st day of September, 2006.

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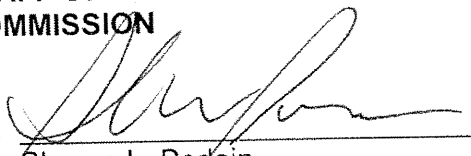
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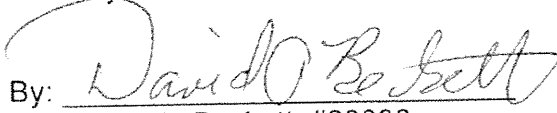
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## ATTACHMENT A

### PUBLIC SERVICE'S VIEW

Public Service sets forth its logic in its Application and the Direct Testimony and Exhibits of Karen T. Hyde. In Public Service's view, when the Denver Water Board takes service at its filter stations and pumping plants under the Primary General Service Tariff, Denver Water Board is paying the full cost of service rate for all the electricity it uses. There is no question that this is a fair rate.

Then, under the New DWB PPA, Public Service obtains capacity and energy from the hydroelectric facilities owned and operated by Denver Water Board at a price that remains less than the price at which Denver Water Board takes service from Public Service. Under the New DWB PPA, Public Service will be paying Denver Water Board a price for its capacity and energy pegged to 94% of the Company's average production costs and energy costs in the PG tariff, as that tariff changes from time to time over the course of the twenty-year term of the New DWB PPA. In other words, Public Service will always be paying Denver Water Board for its electric power at a rate that is **less** than the Company's system average production costs (which Denver Water Board is paying Public Service). This is particularly a good deal because the energy provided by Denver Water Board is provided primarily during the summer, when Denver Water Board is spilling water through its turbines to provide for peak summer water usage in Denver Water Board's service areas. The Denver Water Board production is provided when Public Service needs it the most during Public Service's higher-priced peak summer periods. Therefore, Denver Water Board production displaces some of the Company's highest marginally-priced energy, for a price that is always lower than the

Company's system average energy cost. Ms. Hyde provides in her Exhibit KTH-2 the Company's projection that the value of this avoided energy alone is worth \$18 million more over the life of the New DWB PPA than the amount the Company expects to pay under the New DWB PPA for the capacity and energy from Denver Water Board. In Public Service's view, the Company's retail customers clearly benefit from this contract.

Ms. Hyde also emphasizes that a fair price is paid Denver Water Board for its generation capacity through contract provisions that link that capacity payment to the actual production levels met by Denver Water Board during the Company's prior peak summer period. In addition, Denver Water Board has agreed to use commercially reasonable best efforts to maximize hydro generation, minimize pump loads and even run Denver Water Board's diesel generators to assist the Company during periods of emergency. This contractual provision "firms up" the Denver Water Board capacity when it is most needed by the Company.

In addition, all of the capacity and energy supplied by Denver Water Board under the New DWB PPA is generated from Eligible Renewable Energy Resources, as that term is defined in the Commission's Renewable Energy Standard Rules, 4 CCR 723-3-3650 *et seq.*<sup>2</sup> Public Service maintains that it is offering Denver Water Board a price for its capacity and energy that mirrors the financial result that is obtained by other customers who install Eligible Renewable Energy Resources and who qualify for net metering under the Commission's Renewable Energy Standard Rules. While the

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<sup>2</sup> Public Service and the Denver Water Board entered into the New DWB PPA and Public Service applied for Commission approval of the New DWB PPA prior to the effective date of the Commission's Renewable Energy Standard Rules. Therefore the competitive procurement provisions of the Renewable Energy Standard Rules did not apply. The Denver Water Board generation is exempt from the competitive procurement rules under the Commission's Least Cost Planning Rules because it is a new contract for capacity and energy from a non-utility generator for not more than 30 megawatts of capacity. See 4 CCR 723-3-3611(c).

arrangement with the Denver Water Board is not true net metering because the Denver Water Board's loads are not co-located with the Denver Water Board generation, the New DWB PPA effects what Ms. Hyde refers to as "synthetic net metering" because Denver Water Board is paid for its generation at the same "production" rate<sup>3</sup> that it pays the Company for electricity under the PG tariff, less 6% to reflect average delivery losses due to the lack of co-location. Public Service contends that by structuring the New DWB PPA in this way, Public Service is treating Denver Water Board in a comparable manner to the way other Eligible Renewable Energy Resources are treated under the Renewable Energy Standard Rules.

For all of these reasons, Public Service maintains that this contract is in the public interest and that it should be approved by the Commission.

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<sup>3</sup> Under the New DWB PPA, the Denver Water Board is paid for its generation capacity based under 94% of the *production* cost in the PG rate. The demand charge in the PG rate includes not only production cost, but also transmission and distribution cost. The generation of a true net-metered customer would offset not only production cost, but also transmission and distribution cost. However, since the Denver Water Board load is not co-located with its generation, it is fair that Denver Water Board be paid a capacity rate based upon offset production cost only.

## ATTACHMENT B

### DENVER WATER BOARD'S VIEW

Denver Water Board agrees with Public Service that it is fair for the New DWB PPA to be modeled after the net metering provisions in the Commission's Renewable Energy Standard Rules. Denver Water Board is transferring to Public Service the Renewable Energy Credits created by the Denver Water Board generation and, therefore, Denver Water Board should be paid a price that is comparable to the prices paid other net metered customers.

Denver Water Board views this contract to be in the public interest because it offers Denver Water Board a price for its hydroelectric capacity and energy that is tied over the twenty year term to the price that the Denver Water Board must pay to run its pumps and filters. This provides Denver Water Board a hedge against high utility prices and provides Denver Water Board fair value for its hydroelectric energy over time. Keeping its production costs in check helps Denver Water Board keep its water rates at a reasonable level. There is a significant overlap between Public Service's retail customers and Denver Water Board's 1.2 million retail customers in the Denver metropolitan area, almost one-quarter of the State's residents. The New DWB PPA promotes the maximum beneficial use of the State's water resources, one of its most vital natural resources, by using the water being transported for water supply purposes to also generate power. An important part of Denver Water Board's current, long term, effort to promote water conservation and wise use of water is conservation pricing which will be adversely affected if volatility in net energy costs results in corresponding

volatility in water rates. For these reasons, the Denver Water Board maintains that this contract is in the public interest and should be approved by the Commission.

## ATTACHMENT C

### STAFF'S VIEW

Staff also supports a recommendation that the Commission grant Public Service's application and approve the New DWB PPA. However, as explained below, Staff cannot recommend that the Commission analyze the New DWB PPA in accordance with the analysis presented by Public Service. Instead, Staff's markedly different approach to evaluate the New DWB PPA is to view the New DWB PPA in terms of a new resource acquisition, subject to the Commission's least cost planning rules found at 4 CCR 723-3-3600 *et seq.* The conclusion reached by Staff is that the general body of ratepayers would not be harmed by Commission approval of the New DWB PPA.

Staff has identified the following non-dispositive concerns with the Application as presented and defended by Public Service:

- An analysis of the New DWB PPA should stand alone on its merits. Therefore, Staff does not attempt to link the New DWB PPA with the Primary General Service tariff rate under which the Denver Water Board will take service.
- The Company's economic analysis presented in Confidential Exhibit KTH-2 uses an analysis that compares the New DWB PPA rate (based on a system-average energy cost) to Public Service's incremental cost for energy. Staff does not believe that this is an appropriate comparison.
- The inclusion of a capacity rate as part of the terms of the New DWB PPA, absent the ability of the Denver Water Board resources to demonstrate a

fixed capacity rating, verifiable on an annual basis, is not appropriate. While the payment schedule contained in the New DWB PPA may be fair and reasonable when looked at in its totality, the form of the payments lacks transparency and is structured as a means to an end rather than a depiction of the electricity being purchased. In Staff's opinion, the New DWB PPA should have reflected an all-in-one energy-only payment similar to a market purchase.

- The acquisition of the renewable energy credits ("RECs") from Denver Water Board's hydroelectric resources should have been bid into a competitive solicitation. Based on express statements by the Commission in the recent Amendment 37 rulemaking proceedings, the fact that the New DWB PPA was negotiated before the renewable rules formally became effective should not be a controlling factor in Public Service's willingness not to require Denver Water Board to bid the RECs at issue into a competitive solicitation. The Commission envisioned just such a scenario in Decision C06-0091, ¶ 59 (Docket 05R-112E) dated January 27, 2006 when, in denying Public Service's application for rehearing, reargument or reconsideration seeking an exemption from acquiring RECs via a competitive solicitation, it ruled:

We are also concerned about possible abuse of this exemption by outside entities. For example, a city, as part of its franchise negotiations, could attempt to demand from a Qualifying Retail Utility (QRU) the purchase of a renewable facility or the purchase of the output from a renewable facility as part of a proposed franchise agreement. Under this hypothetical situation, the QRU could freely enter into the contract under the exemption provision and sign a contract

with the city, which may not have a market-based price. Ultimately, the higher price contract costs could be passed-on to customers...

Furthermore, while the Company claims that the Amendment 37 Rules (4 CCR-723-3-3650 *et seq.*) do not apply here because they did not become effective until after this PPA was signed, Staff notes that the New DWB PPA goes into effect on March 31, 2007, months after the effective date of the Amendment 37 Rules.

- In its testimony, and in this Stipulation, Public Service acknowledges that the concept of net metering is a poor fit. Correctly used, the term net metering applies to an end-use facility or customer wherein the facility's actual usage is offset by its production as measured by a single meter. Applying the term to the instant situation of aggregating multiple generators and multiple loads is not net metering and the invention of a new term – "synthetic net metering" – is unwarranted.
- While Staff acknowledges the Company's contention that there is a constant six percent margin separating the price paid for Denver Water Board energy from the revenue received from sales to the Denver Water Board, a six percent margin does not appear to benefit Public Service's general body of ratepayers. In its Application, Public Service notes that its energy payment to Denver Water Board is pegged at 94 percent of the Company's retail rates "to reflect 6% average system losses on the company's transmission and distribution systems." In effect, after accounting for these losses, the Company is paying retail rates to Denver



Water Board. Staff reasonably should have expected that, like virtually all businesses, the Company would purchase its inventory at wholesale and sell it at retail. The Current DWB PPA had a ten percent differential, and, therefore, after subtracting for system losses, the Company still enjoyed a four percent real margin.

- Lastly, Staff believes that the Commission should be aware of an inherent risk that the NEW DWB PPA holds for ratepayers in light of its twenty-year term. Since the payments for capacity from Denver Water Board's hydroelectric facilities are derived from Public Service's Primary General Service tariff rate, as that rate changes from time to time, this rate is not known and measurable for the term of the power purchase agreement as is the case in a typical power purchase agreement; instead the rate will fluctuate over the next twenty years in conjunction with any changes to Public Service's rates that the Commission approves during the term of the New DWB PPA. The impact of the inclusion of Comanche 3 into rate base will affect the Primary General rates and, therefore, will similarly affect the capacity rate paid by Public Service under the New DWB PPA. Also, Public Service's planned Integrated Gasification Combined Cycle plant and any other new coal-fired generation that becomes part of Public Service's base load resource pool during the term of the New DWB PPA will impact the Primary General rates and, therefore, the capacity rate paid by Public Service under the New DWB PPA. While Ms. Hyde's analysis reasonably assumes a five percent per annum escalation of the capacity

component being paid to the Denver Water Board, this capacity component could in fact escalate at a rate higher than five percent. Thus, the cost-competitiveness of the New DWB PPA as compared to a resource for which the actual escalation rate is presently known and measurable for the duration of the power purchase agreement is dependent on the accuracy of Ms. Hyde's escalation assumption. This risk that the assumed escalation rate turns out to be too low over the duration of the New DWB PPA, and in hindsight the New DWB PPA is not a good deal, is a risk borne by Public Service's ratepayers.

Notwithstanding the above non-dispositive concerns, Staff believes that the New DWB PPA should be approved by the Commission. As mentioned earlier, Staff reaches this conclusion after applying the Commission's least cost planning rules to determine whether Commission acceptance of the New DWB PPA is in the interest of the general body of ratepayers. In essence, Staff is comfortable that the price to be paid for the electricity provided pursuant to the New DWB PPA, when based on the current Primary General Service tariff, will be cost-competitive with other supply-side resources acquired through a request for proposals made pursuant to the least cost plan recently approved by the Commission in Docket Nos. 04A-214E, 04A-215E and 04A-216E.

Staff took the payment schedule presented by Ms. Hyde in Exhibit KTH-1 and converted the capacity payment into a comparable energy rate. Then, Staff added the converted capacity rate to the energy rate producing an all-in-one rate totaling \$47.66/MWh. This rate of \$47.66/MWh was then compared to contracts for

nondispatchable resources recently signed as part of the 2003 Least Cost Resource Plan.

Additionally, Staff requested Public Service to present a comparison of the cost of the New DWB PPA for the duration of the agreement with those from alternative supply side resources. One of the supply-side resources used as a comparable is a combined cycle gas plant. When compared to the gas plant, the New DWB PPA demonstrates savings in the range presented in Exhibit KTH-2 of Ms. Hyde's testimony. The second supply side resource used as a comparable is a wind-powered facility with back-up capacity. When compared to the wind-powered facility, the costs for the New DWB PPA were competitive (albeit slightly higher).

Based on these comparisons, which Staff finds to be dispositive in their demonstration of cost-effectiveness, there is no basis that justifies additional litigation given the time constraints that face both Public Service and the Denver Water Board.

For all of these reasons, Staff maintains that this contract should be approved by the Commission.

## CERTIFICATE OF SERVICE

I hereby certify that on this, the 21<sup>st</sup> day of September 2006, the original and seven (7) copies of the foregoing **Stipulation** were served via hand delivery on:

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Colorado Public Utilities Commission  
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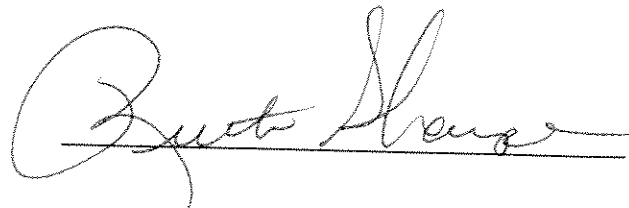
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A handwritten signature in cursive script, appearing to read "David Beckett", is written over a horizontal line.