

BEFORE THE PUBLIC UTILITIES COMMISSION OF COLORADO

DOCKET NO. 09A-772E

IN THE MATTER OF THE APPLICATION OF OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS 2010 RENEWABLE ENERGY STANDARD
COMPLIANCE PLAN.

ANSWER TESTIMONY OF LOWREY BROWN

ON BEHALF OF

WESTERN RESOURCE ADVOCATES

February 4, 2010

1 **Q. Please state your name, occupation, and business address.**

2 A. My name is Lowrey Brown. I am a Senior Policy Analyst in Western Resource Advocates'
3 (WRA) Energy Program. My business address is 2260 Baseline Road, Suite 200, Boulder, CO
4 80302.

5 **Q. Please describe WRA.**

6 A. WRA is a non-profit conservation organization working to protect and restore the natural
7 environment of the Interior American West. WRA's Energy Program works to develop and
8 implement policies to reduce the environmental impacts of the electric power industry in the
9 Interior West by promoting the expanded use of renewable energy, energy efficiency, and other
10 clean energy resources in an economically sound manner.

11 **Q. Have you prepared an appendix that describes your qualifications?**

12 A. Yes, Appendix A is attached to this testimony and describes my qualifications.

13 **Q. Have you previously testified as an expert witness in electric utility proceedings?**

14 A. Yes. I have testified before the Colorado Public Utilities Commission in Docket Nos. 08A-532E
15 and 09A-015E, and before the Public Utility Commission of Oregon on behalf of the Citizens'
16 Utility Board of Oregon. A summary of my participation before the Oregon Commission is
17 included in Appendix A.

18 **Q. Please summarize your testimony.**

19 A. In this testimony I oppose Public Service Company of Colorado's (Public Service) plan to use
20 Windsor customers' voluntarily purchased renewable energy certificates (RECs) to comply
21 with Colorado's Renewable Energy Standard (RES), and again bring to the Commission's

1 attention the lock-down mechanism, and the planning difficulty faced by a utility when it must
2 recalculate the estimated incremental cost of eligible energy resources acquired in prior years.

I. Windsource RECs Should Not Be Double-Counted

3 **Q. How does Public Service's proposed Renewable Energy Standard Compliance Plan**
4 **double-count Windsource RECs?**

5 A. Public Service plans to use 5% of Windsource RECs sold to customers that purchase 100% of
6 their energy through Windsource to meet the Company's RES requirements in 2009 and 2010.¹

7 **Q. Why do you oppose Public Service's plan to retire Windsource RECs for the Company's**
8 **RES compliance?**

9 A. For a number of reasons: 1) It violates the Windsource Stipulation in Docket No. 08A-260E,
10 signed by Public Service Company of Colorado, the Colorado Office of Consumer Counsel, the
11 Governor's Energy Office, Western Resource Advocates, the City of Boulder, and the County of
12 Boulder; 2) It is contrary to the Commission's Decision No. 10-0080 in Docket 08R-424E that
13 expressly prohibits the utility from using RECs sold in an optional renewable energy pricing
14 program for RES compliance; 3) The information provided to Windsource customers does not
15 inform them of this proposed arrangement, and could easily be read to be misleading in this
16 regard; and 4) It is good public policy that customers' voluntary REC purchases – that they
17 have paid for and that rightfully belong to them – not be used for RES compliance.

18 **Q. How would Public Service's plan to use Windsource RECs to meet its RES requirements**
19 **violate the Windsource Stipulation in Docket No. 08A-260E?**

20 A. The Windsource Stipulation – signed by Public Service, WRA, and others – states:

21 The total number of RECs retired for the green pricing program during the
22 compliance period shall not be less than the green pricing program sales during the
23 compliance period.”²

¹ Public Service Application Volume I at section 4, page 3.

1 Clearly, if the Company were to retire customers' Windsource RECs for compliance with the
2 Renewable Energy Standard, then the number of RECs retired for the green pricing program
3 (Windsource) would be less than the green pricing program sales, as a portion of those sales
4 would have been retired for RES compliance.

5 **Q. How would Public Service's Windsource plan be contrary to Commission Decision**
6 **No. 10-0080 in Docket 08R-424E?**

7 A. While Docket 08R-424E, amending the rules relating to the Renewable Energy Standard, has
8 not yet been closed, the rule in question has not changed since Decision No. C09-0990, mailed
9 on September 9, 2009. Rule 3654(n) clearly states:

10 RECs associated with eligible energy sold by the investor owned QRU under an
11 optional renewable energy pricing program shall be retired by the investor owned
12 QRU and may not be counted by the investor owned QRU toward compliance with
13 the renewable energy standard.³

14 In its Application in this case, Public Service claims that it will follow the rules in Commission
15 Decision No. C09-0990, unless the Commission changes those rules.⁴ In Commission Decision
16 No. C09-0990, Rule 3654(n) reads as quoted above.⁵ Public Service cannot retire customers'
17 Windsource RECs for RES compliance and not be in violation of the above-quoted rule.

18 **Q. What is the basis of your claim that Windsource customers could be misled if Public**
19 **Service uses a portion of their Windsource RECs for RES compliance?**

20 A. First, in the information readily available to Windsource customers, there is no mention of the
21 Company's plan to retire a portion of 100% Windsource customers' RECs to meet its RES
22 requirements. In examining material I considered "readily available," I looked at the Company's

² Docket No. 08A-260E. Final Stipulation And Settlement Agreement. January 8, 2009. Page 4. Approved in Decision R09-0117.

³ Docket 08R-424E. Decision No. C10-0080, Attachment A at 11.

⁴ Public Service Application at 1.

⁵ Docket 08R-424E. Decision No. C09-0990, Attachment A at 12.

1 Colorado website pages dedicated to Windsource and the *Residential Pricing Structure Letter*
2 that was sent to customers (available from the Windsource pricing webpage).⁶ A copy of the
3 Letter and the Windsource website pages I looked at are included as Exhibit LB-1.

4 Second, the wording and presentation of the Windsource program, as portrayed by the Company
5 in the material I examined, appears to provide the message that all Windsource purchases are
6 additional to what would have been produced otherwise. The Letter points out that Windsource
7 customers will “[i]ncrease the amount of renewable energy produced and delivered in
8 Colorado,” and “... your Windsource subscription will help fund new renewable resources in
9 Colorado.” The Windsource introductory webpage states that you “can feel proud that by being
10 a part of the Windsource family, you are helping to increase wind energy production in
11 [Colorado].” If any customers’ Windsource purchases are retired for the Renewable Energy
12 Standard, then those RECs are not increasing the amount of renewable energy produced and
13 delivered in Colorado, they are merely supporting the statutory requirement that the Company
14 would have had to have met with or without Windsource customer participation.

15 In summary, not only does the information provided to Windsource, or potential Windsource,
16 customers not inform them that, if they opt for 100% Windsource, 5% of their voluntary
17 purchase will actually go to supporting Public Service’s RES responsibility, the description of
18 the program provides, as I read it, a clear indication that Windsource contributions are allowing
19 the utility to go beyond where it would be otherwise. If customers’ voluntarily purchased RECs
20 are being used to meet the Company’s RES requirements then this is not the case, and
21 Windsource customers would have every right to feel misled. The Company and many other

⁶ February 2, 2010.

http://www.xcelenergy.com/Colorado/Residential/RenewableEnergy/Windsource_/Pages/WindSource.aspx. The pricing and product content pages were accessed through the Windsource menu on the left bar, and a link to the *Residential Pricing Structure Letter* is at the bottom of the pricing webpage.

1 parties have put a great deal of effort into building Windsource, and the damage done to the
2 credibility of the Windsource program if customers were to feel misled would be difficult to
3 repair.

4 **Q. Explain why it is good public policy that customers' voluntary REC purchases not be used**
5 **for RES compliance.**

6 A. Windsource customers have voluntarily paid more for renewable energy, and the RECs from
7 that renewable energy belong to the customer, not to Public Service. Public Service has an
8 obligation to its Windsource customers to retire the Windsource RECs on behalf of those
9 customers. The Xcel Windsource pricing webpage states that the "Windsource rate is in addition
10 to the full retail rate." In its Application, the Company states that the "Windsource premium is
11 calculated assuming that Windsource customers are already paying for the system average level
12 of renewable energy through their electric rates, so that when they elect for more renewable
13 energy, the price paid reflects only the increment above system average."⁷ In other words,
14 Windsource customers are paying both the full retail rate for their electricity usage – including
15 the renewable generation included in Public Service's system average resource mix – as well as
16 the premium required for the amount of renewable energy they purchase.

17 It is the premium, however, that pays for the REC. So, Windsource customers pay both for the
18 RECs in Public Service's average system mix, as well as the additional RECs according to the
19 amount of renewable energy they choose to purchase through Windsource. This means that,
20 even for 100% Windsource customers, those RECs belong to the customers, regardless of
21 whether the number of RECs the Windsource customers have paid for is greater than the
22 number of RECs required to cover their usage.

⁷ Public Service Application, Volume I at section 6, page 2.

1 It is important to protect the good public policy precedent that customers' voluntarily purchased
2 RECs – that they have paid for and that rightfully belong to them – not be used to comply with
3 the State's RES.

4 **Q. Public Service claims that its proposal is consistent with Green-e Standards.⁸ How does**
5 **this influence your evaluation?**

6 A. It doesn't. The Stipulation between the parties, the Commission Decision with regard to the use
7 of RECs in voluntary green pricing programs in the RES Rules, and the policy discussion above
8 stand, despite what appears to be the exception, relied upon by Public Service, in the Green-e
9 National Standard.

10 I say "appears," because the language in the paragraph describing the exception that Public
11 Service references is completely contrary to multiple other criteria in the Green-e National
12 Standard that clearly and specifically prohibit any kind of double-counting. Conceptually
13 reconciling the exception language relied upon by Public Service with the rest of the Green-e
14 National Standard is difficult at best. For example, from pages 7-8 of the Green-e Standard:

- 15 • "Green-e Energy Certified products must be comprised of eligible renewable generation
16 over and above anything required by state or federal RPS requirements, legislation, or
17 settlement agreements."
- 18 • "Renewable energy or RECs may NOT be used in a Green-e Energy Certified product under
19 the following circumstances: 1) The REC or the electricity from which the RECs are derived
20 is being used simultaneously to meet a local, state, or federal energy mandate or other legal
21 requirement ..."
- 22 • "Eligible RECs or renewable energy can be used once and only once; making a claim (e.g.
23 stating "we buy wind power") is one example of a 'use' that results in retirement."
- 24 • "Examples of prohibited double uses include ... 3) When the same REC is used by an
25 electricity provider or utility to meet an environmental mandate, such as an RPS, and is also
26 used to satisfy customer sales under Green-e Energy."

⁸ Public Service Application Volume I at section 4, page 3 and section 6, page 3.

1 Exhibit LB-2 contains the Green-e National Standard Version 1.6 (appendix omitted). Given
2 what appeared to me to be a contradiction in the Green-e Standard, I contacted the Green-e
3 Energy Representative for the Western Region for guidance in interpretation, and his response
4 was that the exception language in question had recently surfaced as a candidate for
5 clarification. Though it was not included in the Center for Resource Solutions' (the umbrella
6 organization that implements the Green-e consumer-protection standards) most recent call for
7 comments in its process for revising and updating the National Standard, it was an issue the
8 Staff is considering putting before the Green-e Governance Board based on feedback from
9 stakeholders.⁹

II. The Lock-Down Mechanism

10 **Q. What is your concern with regard to Public Service's use of the lock-down mechanism in**
11 **this docket?**

12 A. I don't have a concern with regard to Public Service's use of the lock-down mechanism in this
13 docket. Rather, my concern is that the Company's filing demonstrates the long-term planning
14 difficulty that results from the temporary lock-down as prescribed in Commission Decision No.
15 C09-0990.¹⁰ In Docket Nos. 08R-424E and 08A-532E, WRA argued strongly that the lock-
16 down mechanism applied for the life of a resource provides both a modicum of stability in a
17 rapidly-changing planning environment, and results in a better measure of the retail rate impact
18 over time.

19 As pointed out by Ms. Kittel, the added uncertainty of having to recalculate the estimated
20 incremental cost of the resources the Company acquired five years prior makes planning for

⁹ Center for Resource Solutions. Alex Pennock, Green-e Energy Representative for the Western Region, including Hawaii and Alaska. Phone conversation on February 2, 2010. (415) 561-2100.

¹⁰ Docket No. 08R-424E, Decision No. C09-0990, at 11-12, ¶¶ 30-32.

1 future resource acquisitions more difficult.¹¹ Over the long-term, as a utility acquires eligible
2 energy resources, the number of resources whose estimated incremental cost must be
3 recalculated in a given year will grow, and, therefore, so too will the planning uncertainty faced
4 by the utility. Planning resource acquisitions for an uncertain future is part of what a utility must
5 do, but adding additional uncertainty to that resource planning process when it is neither
6 necessary nor a demonstrably better theoretical approach to estimating incremental costs does
7 not make sense.

8 **Q. Does this conclude your testimony?**

9 A. Yes.

¹¹ Public Service Testimony of Robin Kittel at 23.

LOWREY BROWN

STATEMENT OF QUALIFICATIONS

Employment

2009 -	Western Resource Advocates <i>Sr. Policy Analyst, Energy Program</i>	Boulder, CO
2004 - 2008	Citizens' Utility Board of Oregon <i>Utility Analyst</i>	Portland, OR
2002 - 2003	Xenergy Consulting (now Kema) <i>Engineering Analyst</i>	Portland, OR
2000 - 2001	Resource Engineering <i>Engineering Intern</i>	Glenwood Springs, CO
1997 - 2000	Ira Klitzner, Securities Broker <i>Writer & Educational Consultant</i>	Aspen, CO
1997	Solar Energy International <i>Intern</i>	Carbondale, CO
1997	The Valley Journal <i>Freelance Writer</i>	Carbondale, CO

Public Utility Commission of Oregon Filings

AR 495	REC Ownership in QF Contracts	Comments, Oral Presentation to ALJ
UE 165	Hydro Power Cost Adjustment Mechanism	Testimony
UE 167	General Rate Case	Testimony
UE 179	General Rate Case	Testimony
UE 180	General Rate Case	Testimony
UE 192	2008 Annual Power Cost Update	Testimony
UE 195	Annual Power Cost Update Mechanism	Testimony, Stipulation
UM 1014	Disposition Of Beaver 8 Generating Unit	Testimony, Stipulation
UM 1121	Texas Pacific Group Acquisition Attempt	Testimony
UM 1147	Deferred Accounting - Power Costs	Comments
UM 1198	Deferred Accounting - 2005 Hydro	Testimony, Stipulation
UM 1261	Deferred Accounting - Power Costs	Testimony, Stipulation
UM 1271	Deferred Accounting - Unregulated Turbine	Testimony
UM 1276	Performance Ratemaking - Buy vs. Build	Comments
UM 1282	Prudence of Avista's Gas Purchasing	Testimony
UM 1286	Purchased Gas Adjustment Investigation	Comments

Education

Master of Science, Engineering	Stanford University, CA
Bachelor of Science, Civil Engineering	Stanford University, CA