

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

PROCEEDING NO. 20A-0327E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING EXPENSES INCURRED FOR THE PERIOD JANUARY 2019 THROUGH DECEMBER 2019 THAT ARE RECOVERED THROUGH THE ELECTRIC COMMODITY ADJUSTMENT AND APPROVING THE CALCULATION OF 2019 SHORT TERM SALES MARGINS.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
CONOR F. FARLEY  
ACCEPTING SETTLEMENT AGREEMENT, GRANTING  
APPLICATION AS MODIFIED BY SETTLEMENT  
AGREEMENT, AND CLOSING PROCEEDING**

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Mailed Date: March 12, 2021

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**I. STATEMENT**

**A. Background**

1. On August 3, 2020, Public Service Company of Colorado (Public Service or Company) filed a Verified Application seeking approval of the fuel, purchased energy, purchased wheeling, and other expenses incurred from January 1, 2019, through December 31, 2019, and recovered via the Company’s Electric Commodity Adjustment (ECA) bill rider (Application). With the Application, Public Service filed supporting testimony of Brooke A. Trammel, Alexander G. Trowbridge, Kathryn A. Kladis, Hari Singh, and Mark G. Schultz.

2. On August 5, 2020, the Commission issued notice of the Application.

3. The Office of Consumer Counsel (OCC) and Trial Staff of the Commission (Staff) filed notices of intervention by right and entries of appearance on August 31, 2020, and September 2, 2020, respectively.

4. On September 9, 2020, the Commission issued a minute order deeming the Application complete and referring the proceeding to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

5. On October 20, 2020, the ALJ issued Decision No. R20-0742-I that extended the statutory deadline pursuant to § 40-6-109.5(1), C.R.S., established a procedural schedule, and scheduled a remote hearing in this proceeding for January 6 and 7, 2021.

6. On December 11, 2020, Public Service filed a Notice of Settlement in Principle, Unopposed Motion to Amend Procedural Schedule, and Request for Waiver of Response Time (Unopposed Motion). In the Unopposed Motion, Public Service stated that it had reached a settlement in principle with Staff and that the OCC, while not a party to the Settlement Agreement, did not oppose it. Public Service requested amendment of the procedural schedule by: (a) vacating the deadline for rebuttal/cross-answer testimony; (b) establishing December 18, 2020 as the deadline for filing the settlement agreement (Settlement Agreement); and (c) establishing January 4, 2021 as the deadline for filing testimony in support of the Settlement Agreement. Public Service also requested that a remote hearing on the Settlement Agreement be held on either January 6 or 7, 2021, “if needed.”<sup>1</sup>

7. On December 15, 2020, the ALJ issued Decision No. R20-0891-I that granted the Unopposed Motion, set December 18, 2020 as the deadline to file the Settlement Agreement and a motion to approve the settlement agreement, and January 4, 2021 as the deadline to file testimony in support of the Settlement Agreement. Decision No. R20-0891-I also scheduled a hearing on the Settlement Agreement for January 13, 2021, as necessary.

8. On December 18, 2020, Public Service and Staff filed an Unopposed Joint Motion to Approve Comprehensive Settlement Agreement and Request for Waiver of Response Time (Unopposed Joint Motion) and attached the Settlement Agreement as Hearing Exhibit 106.

9. On January 4, 2021, Public Service and Staff filed testimony in support of the Settlement Agreement. On the same day, the OCC filed Comments Regarding the Settlement

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<sup>1</sup> Unopposed Motion at 3 (¶ 3).

Agreement (OCC’s Comments) in which it confirmed that it does not oppose the Settlement Agreement or the Unopposed Joint Motion.

10. On January 11, 2021, the ALJ issued Decision No. R21-0013-I that vacated the hearing. The ALJ determined in Decision No. R21-0013-I that the January 13, 2021 hearing was unnecessary in light of the information contained in the Unopposed Joint Motion, the Settlement Agreement, the testimony filed in support of the Settlement Agreement, and the OCC’s Comments.

**B. Application**

11. The ECA is a volumetric rate bill rider designed to facilitate recovery of certain recently-incurred costs (and benefits) as well as provide for a true-up of over- or under-recovered costs.<sup>2</sup> The ECA in its present form has been in effect since January 2007. The current ECA rate has generally been approved to recover the following sixteen components for at least the next two years:<sup>3</sup>

Fuel and purchased power	Prior quarter Renewable Energy Standard Adjustment (RESA) incremental costs (credit to the ECA)
Renewable*Connect bill credits	Pueblo County/City property tax refund
Cost of wheeling for purchased power	Medical Exemption Program lost revenue
Production Tax Credits (PTCs) for both Rush Creek and Cheyenne Ridge	Rush Creek revenue requirement
Financial hedging costs/benefits	Rush Creek capital cost sharing (starting in 2020)

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<sup>2</sup> See Hearing Exhibit 400 at 13:18014:2 (Answer Testimony of Staff Witness Erin O’Neill).

<sup>3</sup> *Id.* at 12:11-13:14.

Community Solar Garden subscriptions	Cheyenne Ridge wind farm revenue requirement including the impact of any Deferred Tax Asset (starting in 2020)
Least Cost Plan audit costs ( <i>i.e.</i> , Independent Evaluator expense)	Energy reduction benefit calculation attributable to Integrated Volt-Var Optimization (starting in 2021)
Prior year trading margin sharing for Gen Book and Prop Book	Accounting of the deferred balance in the ECA account including the interest on the deferred balance

12. The Company makes six filings addressing the ECA in effect in each calendar year. First, Public Service files an Application on or about November 1 of the year preceding the year in which the ECA will be in effect. The November filing seeks approval of certain components of the ECA that will be in effect the following year. The Company filed the application that sought approval of the ECA that was in effect for calendar year 2019 on October 30, 2018 (2018 Application).<sup>4</sup> The Commission granted the 2018 Application in Decision No. C18-1091 on December 7, 2018.

13. Second, the Company files applications on a quarterly basis on less than statutory notice that seek approval of the proposed ECA for the following quarter. For the ECA in effect during 2019, Public Service filed its last quarterly application on September 13, 2019, which the Commission approved in Decision No. C19-0788 on September 25, 2019.<sup>5</sup> The approved ECA rider then went into effect on October 1, 2019.

14. Finally, Public Service files an annual ECA application on or about August 1 of each year for a review of whether the Company prudently incurred and recovered the expenses

<sup>4</sup> See Proceeding No. 18A-0754E.

<sup>5</sup> See Proceeding No. 19L-0493E.

through the ECA over the prior calendar year (Prudency Review Proceedings). As noted above, this is a Prudency Review Proceeding addressing the costs recovered through the ECA in 2019.<sup>6</sup>

15. As they seek approval of the ECA to be in effect in the future, the November and quarterly filings are based on projected or estimated costs.<sup>7</sup> The Prudency Review Proceedings filed in August provide interested parties the opportunity to investigate (and contest, if necessary) the prudence of the historical costs that have already been recovered through the ECA.<sup>8</sup>

16. In the Application, Public Service requested approval of: (a) its fuel, purchased energy, and purchased wheeling costs incurred from January 1, 2019 through December 31, 2019; (b) its calculation of the 2019 Rush Creek capital and O&M costs and Production Tax Credits pursuant to Decision No. C16-0958;<sup>9</sup> (c) its Independent Evaluator costs;<sup>10</sup> (d) its calculation of kWh reductions as a result of the Integrated Volt-Var Optimization (IVVO) investments pursuant to the formula approved in Decision No. C17-0556;<sup>11</sup> and (e) its calculation of the 2019 Short-Term Sales Margins that have been used to adjust the 2020 ECA Deferred Account Balance.<sup>12</sup> Public Service recovered the costs identified in (a) through (c) through the ECA rider in 2019. The

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<sup>6</sup> See Hearing Exhibit 400 at 10:13-12:7 (Answer Testimony of Ms. O'Neill).

<sup>7</sup> See *id.* at 10:13-11:9.

<sup>8</sup> *Id.* at 10:13-12:7.

<sup>9</sup> Issued in Proceeding No. 16A-0117E on October 20, 2016.

<sup>10</sup> See Decision No. C13-0323 issued in Consolidated Proceeding Nos. 11A-869E, 12A-782E and 12A-785E on March 15, 2013.

<sup>11</sup> Issued in Proceeding No. 16A-0588E on July 25, 2017.

<sup>12</sup> See Decision No. C04-1208 issued in Proceeding No. C04-1208 on October 15, 2004; Decision No. C06-1379 in Proceeding No. 06S-234EG on December 1, 2006; Decision No. C09-1446 issued in Proceeding No. 09AL-299E on December 24, 2009; Decision No. C12-0494 issued in Proceeding No. 11AL-947E on May 9, 2012; Decision No. C15-0292 issued in Proceeding No. 14AL-0660E on March 31, 2015; Decision No. C17-0085 issued in Proceeding No. 16A-0276E on January 30, 2017; Decision No. C19-0497 issued in Proceeding No. 19D-0193E on June 10, 2019.

calculation in (d) resulted in 2019 energy reduction benefits of \$1,011,579 that Public Service requests to be recovered through the ECA in 2021.<sup>13</sup>

### **C. Answer Testimony**

#### **1. Staff**

17. In analyzing Public Service’s cost of fuel and purchased power to serve its retail load during the preceding year, intervenors must understand whether Public Service “operat[ed] the system in the most economic manner subject to reliability and safety considerations.”<sup>14</sup> Staff states that this analysis “is now substantially more complicated [] than historically due to the addition of large company-owned renewable facilities and the increase in renewable [Purchase Power Agreements]. These non-dispatchable resources result in the need for more flexible resources and curtailments as well as introducing different transmission flows and constraints.”<sup>15</sup> Staff stated that it needed to “develop[] a better understanding of the Company’s operating system” to conduct this analysis.<sup>16</sup> Public Service ultimately provided through discovery the information necessary for Staff to obtain that understanding in this proceeding. It was not included in the Application.<sup>17</sup>

18. Staff also addressed outages at Comanche Unit 3 and Cherokee Unit 4 and underproduction of the Rush Creek wind facility, which is owned by Public Service. As to the first two, Comanche 3 had an unplanned outage from July 13 to July 20, 2019 due to a tube leak, and Cherokee 4 had a planned outage scheduled for February 8 to February 16, 2019 that had to be

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<sup>13</sup> Hearing Exhibit 102 at 17:13-17 (Direct Testimony of Mr. Trowbridge).

<sup>14</sup> Hearing Exhibit 400 at 22:5-6 (Answer Testimony of Ms. O’Neill).

<sup>15</sup> *Id.* at 22:8-12.

<sup>16</sup> *Id.* at 22:12-13.

<sup>17</sup> *Id.* at 22:18-21.

extended through April 28, 2019. The Comanche 3 outage coincided with Public Service's peak load day of 2019 and resulted in a replacement energy cost of approximately \$3.8 million.<sup>18</sup> Staff found the Cherokee 4 outage particularly troubling given that Public Service had designated the unit as "must-run" from January 3 to June 3, 2019.<sup>19</sup> Staff concluded that it needed to gain a better understanding of the engineering and operational challenges faced by Public Service, which would require the sharing of more information on an ongoing basis, including data from the Generation Availability Data System (GADS) for Public Service's fossil and renewable resources.<sup>20</sup> Staff did not question the prudence of the costs resulting from these outages because, under these circumstances, Staff chose "to provide [Public Service] appropriate leeway to ensure system reliability."<sup>21</sup>

19. The Rush Creek wind facility's generation in 2019 was only 86 percent of expected values as initially presented by Public Service in its asset-acquisition-approval proceeding.<sup>22</sup> Specifically, the facility only generated 1.97 million MWh in 2019, as opposed to annual production of 2.29 million MWh projected by the Company.<sup>23</sup> Twenty-three percent of this underperformance was attributable to curtailment – *i.e.*, decisions by "Transmission Operations to curtail generation [at the Ruch Creek facility] . . . to maintain system reliability in accordance with the curtailment protocol."<sup>24</sup> While difficult to quantify, these curtailments had financial consequences for ratepayers. The Rush Creek facility receives Production Tax Credits (PTCs) that flow through the ECA as a credit. This is at least one of the reasons Public Service testified in

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<sup>18</sup> *Id.* at 25:1-15.

<sup>19</sup> *Id.* at 26:1-7.

<sup>20</sup> *Id.* at 26:9-15; 33:10-34:4.

<sup>21</sup> Hearing Exhibit 402 at 9:18-20 (Settlement Testimony of Ms. O'Neill).

<sup>22</sup> Proceeding No. 16A-0117E.

<sup>23</sup> Hearing Exhibit 400 at 27:1-3 (Answer Testimony of Ms. O'Neill).

<sup>24</sup> *Id.* at 30:17-20 (quoting discovery response by Public Service).



Proceeding No. 16A-0117E that “as of January 1, 2019, Public Service will have over 1,424 MW of non-PTC wind resources in its portfolio, and these non-PTC wind resources will get curtailed before any curtailment of PTC wind resources such as Rush Creek.”<sup>25</sup> As a result, the curtailment of Rush Creek’s generation in 2019 had financial consequences for ratepayers due to the resulting loss of PTCs.<sup>26</sup>

20. Staff expressed two primary concerns with the issues surrounding the Rush Creek wind facility. First, Public Service did not disclose this information earlier to the Commission, and then was not more forthcoming in this proceeding in identifying and explaining the underperformance. According to Staff, it took multiple rounds of written discovery to obtain an adequate explanation.<sup>27</sup> Second, Staff stated that it needs to better understand the operation of the Rush Creek wind facility and how and when Public Service will achieve the 2.29 million MWh of production projected in Proceeding No. 16A-0117E.<sup>28</sup>

21. Finally, Staff recommended that Public Service be required to: (a) retain more information regarding wind and solar curtailments and then report such information in ECA proceedings;<sup>29</sup> and (b) provide data addressing its system load and the resources serving that load on an hourly basis in all future ECA proceedings.<sup>30</sup> Such information will streamline future ECA proceedings and allow intervenors to understand better the operation of Public Service’s system.

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<sup>25</sup> *Id.* at 30:10-13 (quoting testimony of Public Service witness James F. Hill in Proceeding No. 16A-0117E).

<sup>26</sup> *Id.* at 31:9-19.

<sup>27</sup> *Id.* at 24:10-15.

<sup>28</sup> *Id.* at 33:3-8.

<sup>29</sup> *Id.* at 44:9-24.

<sup>30</sup> *Id.* at 49:8-23.

## 2. OCC

22. In its answer testimony, the OCC made four recommendations, two of which focused on curtailment costs. First, the OCC noted that the curtailment costs of Public Service's wind and solar facilities increased from \$14.4 million in 2018, to \$30.8 million in 2019.<sup>31</sup> Based on the fact that the Rush Creek wind facility entered service in December 2018 and testimony by Public Service witness Mr. Schultz, the OCC attributed the approximately \$16.4 million increase in curtailment costs in 2019 to the addition of the Rush Creek wind facility into Public Service's power operations.<sup>32</sup> The OCC further stated that in Proceeding No. 16A-0117E in which Public Service sought approval to build the Rush Creek wind facility, Public Service never indicated the addition of the facility would impact other renewable facility curtailments. Instead, it only presented evidence concerning the direct curtailment costs of the Rush Creek wind facility.<sup>33</sup> The OCC thus recommended disallowing the entire difference between the 2018 and 2019 curtailment costs of Public Service's wind and solar facilities, or \$16,370,067.<sup>34</sup>

23. Second, the OCC took issue with some of Public Service's decisions in selecting wind facilities to curtail. Specifically, the OCC argued that the Company's 2019 curtailment costs could have been reduced by curtailing lower-cost wind farms located at the same point of injection into the Company's system.<sup>35</sup> According to the OCC, because such wind facilities had the "same point of injection into Public Service's system," there was no transmission-related reason not to curtail them instead of the higher curtailment-cost wind facilities selected by Public Service.<sup>36</sup> The

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<sup>31</sup> Hearing Exhibit 300 at 11 (Table CN-4) (Direct Testimony of OCC Witness Chris Neil).

<sup>32</sup> *Id.* at 14:1-18 (quoting Hearing Exhibit 104 at 14:3-11 (Direct Testimony of Mr. Schultz)).

<sup>33</sup> *Id.* at 14:19-15:5.

<sup>34</sup> *Id.* at 15:6-9.

<sup>35</sup> *Id.* at 12:19-22.

<sup>36</sup> *Id.* at 12:22-13:3, 13:11-14.

OCC stated that these Public Service decisions cost ratepayers approximately \$9 million.<sup>37</sup> The OCC recommended that if Public Service did not supply an adequate justification for the curtailment decisions cited by the OCC, the approximately \$9 million should be disallowed.<sup>38</sup>

24. Third, the OCC recommended the rejection of \$7,117,401 in charges to the 2019 ECA that the OCC contended were in excess of actual costs. The specific costs are identified in Table CN-5 of Mr. Neil's answer testimony.<sup>39</sup> The OCC contended that these excess costs recovered through the ECA were profit for Public Service.

25. Finally, the OCC recommended that the Commission require Public Service to provide additional reporting concerning its must-run designations, particularly with respect to Cherokee Unit 4. As noted above, Public Service designated Cherokee 4 must-run from January 3 to June 3, 2019. According to the OCC, Cherokee 4 has relatively high production costs per kWh compared to Public Service's other comparable gas-fired units.<sup>40</sup> The OCC expressed concerns that Public Service did not "operat[e] its system in a least-cost manner" in 2019.<sup>41</sup> The additional reporting will allow intervenors and the Commission in future proceedings to better understand Public Service's must-run designations that can have significant economic consequences for ratepayers.

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<sup>37</sup> *Id.* at 13:17.

<sup>38</sup> *Id.* at 13:18-21.

<sup>39</sup> *Id.* at 18.

<sup>40</sup> *Id.* at 20:1-22:9.

<sup>41</sup> *Id.* at 22:6-7.

**D. Settlement Agreement****1. Agreement**

26. The Settlement Agreement includes nine sections that resolve the issues between Public Service and Staff. As noted above, the OCC does not oppose the Settlement Agreement. The discussion below summarizes the issues addressed in the nine sections of the Settlement Agreement.

27. In Section I, Public Service agreed to provide in future ECA annual prudence review applications the following historic must-run information for the prior year: Plant name; unit name; a description of the system reliability issue; start time; end time; total days under must-run designation; minimum output under must-run designation; maximum output under must-run designation; hours of the day the unit must be operating; total generation (in MWh) of the unit during the must-run period; total production costs (in dollars) incurred by the unit during the must-run period; and a description of all planned and unplanned outages the unit experienced during the must-run designation, including outage start and end times. Public Service also agreed to work with Staff and the OCC to develop a presentation format for the information described above ahead of its next ECA annual prudence review filing.<sup>42</sup>

28. In Section II, Public Service agreed to provide in future ECA annual prudence review applications the following hourly datasets for the prior year: retail load; all resources used to serve retail load (including owned fossil and renewable generation, purchase power agreements (PPAs), purchases and sales, and any other resource serving retail load); interchange energy;

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<sup>42</sup> Settlement Agreement at 2-3.

imbalance purchase and sale energy; system lambda; and the cost of all resources used to serve retail load with appropriate aggregation.<sup>43</sup>

29. In Section III, Public Service agreed to provide in future ECA annual prudence review applications the level and cost of renewable curtailments for the prior year, including: curtailment volumes by unit on an hourly integrated basis; monthly curtailment costs for renewable resources under contract through PPAs; monthly levels of curtailment impacts on PTCs for owned renewable resources; and monthly levels of curtailment volumes with causation information based on actual curtailments over the course of the year.<sup>44</sup>

30. Section IV of the Settlement Agreement addresses the sharing of data from the GADS in future Public Service ECA filings. Specifically, in this section, Public Service agreed to provide in future ECA prudence review applications unit-level annual equivalent availability percentage and complete GADS data for Company- owned fossil generation assets for the prior year. Public Service also agreed to provide owned renewable resource GADS data for the prior year consistent with the North American Electric Reliability Corporation (NERC) GADS Wind Data Reporting Instructions, as well as the annual Equipment Equivalent Availability Factor excluding Outside Management Control. Finally, Public Service agreed to provide additional data as required, and will also provide a comparison of forecasted generation versus actual production for owned resources.<sup>45</sup>

31. In Section V, Public Service agreed to archive the operations analysis performed for each instance of a must-run designation for reliability purposes beginning with calendar year

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<sup>43</sup> *Id.* at 3-4.

<sup>44</sup> *Id.* at 4.

<sup>45</sup> *Id.* at 4-5.

2021. Public Service will provide a summary report of the reliability analyses as part of each future ECA annual prudence review filing and maintain these archives for five (5) years.<sup>46</sup>

32. In Section VI, Public Service agreed that, when a single reliability issue causes multiple must-run designations of a Public Service-owned generating unit such that its aggregate production costs in must-run status during a calendar year exceeds \$5 million in incremental costs, Public Service will determine whether the must-run usage was an isolated occurrence or whether the Company expects similar designation(s) in the future. If Public Service expects similar must-run designations to occur in the future, it will provide a Must-Run Solutions Analysis report in an appropriate proceeding to be determined by procedures detailed further in the Settlement Agreement. The Must-Run Solutions Analysis report will include a description of the underlying reliability issue(s) causing the must-run designation(s), and identify feasible alternative solutions.<sup>47</sup>

33. In Section VII, Public Service agreed to provide a detailed update regarding the engineering, operation, and performance of the Rush Creek Wind Project since it achieved commercial operation. This information will be provided in Public Service's June 1, 2021 report for the Rush Creek Wind Project required by Decision No. C16-0958 in Proceeding No. 16A0117E.<sup>48</sup>

34. In Section VIII, Public Service and Staff agreed that they will hold quarterly meetings (or more frequent meetings if needed) regarding Public Service's generation fleet. These meetings will generally discuss curtailment issues and protocols, how curtailment protocols are implemented, and other system operations issues. In addition to Public Service and Staff, the OCC

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<sup>46</sup> *Id.* at 5.

<sup>47</sup> *Id.* at 5-6.

<sup>48</sup> *Id.* at 6.

will also participate in these meetings. The meetings will be reassessed at the end of 2021, and the Settling Parties will determine whether they should continue.<sup>49</sup>

35. Finally, Section IX of the Settlement Agreement addresses true-up entry reporting as part of the future of Public Service's Renewable Energy Standard (RES) reporting process. In that section, Public Service agreed that significant true-up entries will be expressly identified as part of its RES Report process consistent with the terms of the Settlement Agreement.<sup>50</sup>

## **2. Settlement Testimony**

### **a. Public Service**

36. In her settlement testimony, Ms. Trammell testified concerning how the Settlement Agreement is consistent with the public interest as follows:

The Settlement Agreement here represents the adoption of several additional reporting proposals advanced through Answer Testimony in this proceeding. Specifically, the Settlement Agreement enhances the reporting that will occur as part of our annual ECA prudence reviews, adding transparency and additional detail regarding system operations as our generation fleet moves from a foundation of dispatchable, fossil-fuel resources to cleaner but variable energy resources ("VERs") that are inherently non-dispatchable. Many of the questions raised in Answer Testimony in this proceeding with regard to must-run designations and curtailments are directly related to the operational consideration associated with this generation fleet transition. As [Public Service] continues to add increasing amounts of VERs in pursuit of clean energy targets and to advance the State's progress towards its economywide emissions reduction goals, the use of tools like must-run designation and curtailment will continue to be used by system operators to deliver energy in a safe, affordable, and reliable manner. It is in the public interest that this information be presented to the Commission in more detail and reviewed on a consistent basis, as the Settlement Agreement contemplates. Under the Settlement Agreement, this additional reporting would commence with the 2020 ECA annual prudence review (to be filed in August 2021). [Public Service] recognizes that reporting could likely continue to evolve over the next several years but, as we advance toward 2030 carbon targets, the reporting outlined in the Settlement Agreement will facilitate the presentation of a decade's worth of

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<sup>49</sup> *Id.* at 6-7.

<sup>50</sup> *Id.* at 7.

operational information to the Commission and interested parties in a structured, annual review process.<sup>51</sup>

37. Ms. Trammel spends the remainder of her testimony addressing the concerns raised by the OCC in its answer testimony, including the OCC's proposed disallowances. At the outset, Ms. Trammel explained that understanding why the OCC's proposed disallowances are incorrect requires an understanding of the purposes and differences between the RESA and the ECA for purposes of complying with the retail rate impact requirements of § 40-2-124(1)(g)(I), C.R.S., and Commission Rule 3661,<sup>52</sup> and how the "Net RESA" Transfer provision of the ECA tariff is employed to ensure that the purposes of both the RESA and ECA are effectuated. Towards that end, she further explained that "[t]he RESA is used to recover the incremental costs of eligible energy resources (referred to as 'Incremental Costs') and program administration costs. The ECA is used to recover the costs of eligible energy resources that match the costs of the avoided nonrenewable resources (referred to as 'Avoided Costs')."<sup>53</sup> For complicated reasons, some Incremental Costs are initially recorded to the ECA even though they will be recovered through the RESA. According to Ms. Trammel, "[t]he Net RESA Transfer [provision] shifts the Incremental Cost of the portfolio of Eligible Resources out of the ECA and into the RESA."<sup>54</sup> According to Ms. Trammell, "[t]he 'true-ups' and 'excess' costs identified [by the OCC] are both based on an inaccurate interpretation of the [Net RESA] Transfer provision."<sup>55</sup>

38. Specifically, as to the \$9 million curtailment cost "true-ups" that the OCC recommends be disallowed, Ms. Trammell testified that they "are not costs that [Public Service]

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<sup>51</sup> Hearing Exhibit 107 at 9:12-10:15.

<sup>52</sup> 4 *Code of Colorado Regulations* (CCR) 723-3.

<sup>53</sup> *Id.* at 28:21-29:2.

<sup>54</sup> *Id.* at 33:17-18.

<sup>55</sup> *Id.* at 27:17-20.



has requested to recover through the 2019 ECA. Rather, the \$9 million referenced represents Incremental Costs that have been appropriately transferred from the ECA and recorded to the RESA, consistent with the [Net] RESA Transfer provision.”<sup>56</sup> The \$9 million “true-up” accounting entry identified by the OCC “was made [by Public Service] to properly reflect the amount of costs into their Incremental Cost (RESA) and Avoided Cost (ECA) categories.”<sup>57</sup> It was made “to ensure that Incremental Costs were appropriately transferred from the ECA and recorded to the RESA, consistent with the Net RESA Transfer provision.”<sup>58</sup>

39. As to the \$7.1 million in costs allegedly charged to the ECA in excess of actual costs identified by the OCC, Ms. Trammell testifies that they “represent[] a proper accounting entry to reflect costs that were appropriately transferred from the ECA and recorded to the RESA, consistent with the Net RESA Transfer provision.”<sup>59</sup> Incremental Costs are determined on an individual Eligible Resource basis and some individual Eligible Resources have a positive Incremental Cost and others have a negative Incremental Cost. However, when the Incremental Costs are transferred to the RESA via the Net RESA Transfer provision, it is done on a one-time monthly basis, which requires the Incremental Costs to be calculated for the entire Eligible Resources portfolio.<sup>60</sup> In that calculation, the “positive Incremental Costs are partially offset by negative [I]ncremental [C]osts, which helps to offset the amount of [I]ncremental [C]osts recognized and shifted from the ECA to the RESA. This does not result, however, in the Company recording additional costs to the ECA.”<sup>61</sup>

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<sup>56</sup> *Id.* at 34: 8-12.

<sup>57</sup> *Id.* at 34:14-15.

<sup>58</sup> *Id.* at 35:7-9.

<sup>59</sup> *Id.* at 38:20-23.

<sup>60</sup> *See id.* at 40:9-10.

<sup>61</sup> *Id.* at 38:13-17.

40. Finally, as to the \$16.4 million in alleged Rush Creek-related curtailment costs, Ms. Trammell testified that curtailment decisions are complicated and each decision must be analyzed individually to determine whether it was the best operating decision at the time Public Service made it.<sup>62</sup> However, Ms. Trammell testified that the curtailment decisions identified by the OCC were of renewable resources that “provide energy to [Public Service] pursuant to [Purchase Power Agreements] that are take or pay contracts,”<sup>63</sup> which means that “the energy payment will remain the same regardless of where the curtailment takes place.”<sup>64</sup> As a result, Ms. Trammell contended that the curtailment decisions identified by the OCC made no difference to “ultimate ECA costs.”<sup>65</sup>

41. Ms. Trammell concluded that the information sharing required by the Settlement Agreement and the meetings with Staff and the OCC will help to: (a) educate all involved about the complexities of Public Service’s system as it transitions to renewables and thereby “reduce or even eliminate the types of disallowance proposals we have seen in the past two ECA cycles;” and (b) evolve the ECA presentation . . . and create[] additional data and a forum for further conversations about key system operations issues that are part of this transition.”<sup>66</sup>

**b. Staff**

42. Ms. O’Neill testified that Staff supports the Settlement Agreement and believes it is in the public interest. Ms. O’Neill reiterated a point she made in her answer testimony, namely that Public Service’s transition to renewable generation has complicated Public Service’s system

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<sup>62</sup> *Id.* at 41:14-17, 42:11-44:10, 45:16-18.

<sup>63</sup> *Id.* at 7-8.

<sup>64</sup> *Id.* at 42:15-16.

<sup>65</sup> *Id.* at 45:5-6.

<sup>66</sup> *Id.* at 48:9-21.

operations.<sup>67</sup> According to Ms. O’Neill, the additional reporting required by the Settlement Agreement in Sections I through VI, and the quarterly meetings required by Section VIII, will provide Staff with additional insight into Public Service’s system operations during this transition.

43. The additional insight provided by the additional reporting will provide three benefits. First, it will “provide for a more efficient review of ECA expenses” in Public Service’s future annual ECA prudence review applications because Staff will be in a better position to determine at the outset whether it disagrees with any portion of the applications, rather than being forced to intervene to obtain through discovery the information necessary to make that determination.<sup>68</sup> Second, “Staff will be better able to review [Public Services’] modeling and valuation of potential resources” in Public Service’s resource planning proceedings, which could lead to better outcomes and streamline those proceedings.<sup>69</sup> Third, Public Service’s “review of significant must-run designations pursuant to the Settlement Agreement may identify more cost-effective solutions to address these reliability constraints in the future, reducing overall costs for ratepayers.”<sup>70</sup>

44. As to the Rush Creek wind facility, Staff remains “disappointed that [Public Service] did not inform the Commission of the engineering issues experienced at its first-ever [Public Service]-owned wind facility.”<sup>71</sup> However, Staff believes that Public Service’s agreement to provide “a detailed update regarding engineering, operation and performance of the Rush Creek Wind Project since it achieved commercial operation” as part of its annual reporting in Proceeding

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<sup>67</sup> Hearing Exhibit 402 at 12:2-13 (Settlement Testimony of Ms. O’Neill) (quoting Hearing Exhibit 400 at 5:6-11 (Answer Testimony of Ms. O’Neill)).

<sup>68</sup> *Id.* at 12:20-22.

<sup>69</sup> *Id.* at 13:1-8.

<sup>70</sup> *Id.* at 13:9-12.

<sup>71</sup> *Id.* at 8:10-12.

No. 16A-0177E in June of 2021, is the best outcome.<sup>72</sup> This update will allow the Commission to review the first two years of operation of the facility, which will better inform the Commission of the facility's performance.<sup>73</sup>

45. Finally, Ms. O'Neill testified that the Settlement Agreement's requirement of additional reporting on must-run designations and renewable curtailments, and quarterly discussions with Public Service regarding both topics as well as the evolution of Public Service's system operations, will aid the understanding of Staff and the OCC of these topics, as well as of the operational challenges Public Service faces in its transition to a renewable-based system.<sup>74</sup>

### 3. OCC

46. In its Comments, the OCC states that it is "concerned regarding the amount and quality of the information in [Public Service's]" Application and direct testimony in this proceeding, which represents a continuation of a "recent trend of cases where [Public Service] has presented less than robust direct testimony."<sup>75</sup> The OCC states that this deficiency in direct cases "increases regulatory costs associated with discovery, increases workload, prolongs Proceedings and compromises the public interest balance."<sup>76</sup> In addition, the information "necessary for a full public interest analysis is increasingly not provided until a rebuttal case, after an issue is raised by an opposing party," which does not allow for the development of a fulsome record.<sup>77</sup>

47. When the Settlement Agreement was reached in this proceeding, "the OCC did not believe that . . . the [in]adequacy of the information in this Proceeding [had been addressed] and,

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<sup>72</sup> Hearing Exhibit 106 at 6 (Settlement Agreement).

<sup>73</sup> Hearing Exhibit 402 at 817-20 (Settlement Testimony of Ms. O'Neill).

<sup>74</sup> *Id.* at 9:6-11:16.

<sup>75</sup> OCC's Comments at 3.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 4.

as such, could not be a signatory to the Settlement Agreement.”<sup>78</sup> According to the OCC, without Public Service providing information to address the objections raised by the OCC, the Commission could not conduct a public interest analysis. For this reason, the OCC initially opposed the Settlement Agreement.<sup>79</sup>

48. However, the OCC states that Public Service ultimately provided it with draft testimony that addressed its objections and further committed to file the draft testimony as its settlement testimony. With that commitment, “the OCC believed it to be appropriate to move to an unopposed position regarding this Settlement Agreement.”<sup>80</sup> According to the OCC, “[w]ith the [Public Service]’s settlement testimony in the record, the information may be available to support a decision that the Settlement Agreement is in the public interest and for the Commission to make its decision in this Proceeding.”<sup>81</sup>

## **E. Analysis**

### **1. Burden of Proof**

49. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon “the proponent of an order.”<sup>82</sup> Public Service and Staff filed the Unopposed Joint Motion and, as a result, bear the burden of proof.<sup>83</sup> Public Service and Staff must establish by a preponderance of the evidence that the

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<sup>78</sup> *Id.* at 2.

<sup>79</sup> *See id.*

<sup>80</sup> *Id.* at 3.

<sup>81</sup> *Id.* at 8.

<sup>82</sup> § 24-4-105(7), C.R.S.

<sup>83</sup> Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1.

Settlement Agreement is just and reasonable and in the public interest. The Commission has an independent duty to determine matters that are within the public interest.<sup>84</sup>

## 2. Modified Procedure

50. The Application, as modified by the Settlement Agreement, is uncontested. Moreover, the parties agree that a hearing is unnecessary. Finally, the Application and Settlement Agreement are accompanied by sworn testimony and attachments that verify sufficient facts to support the Application and Settlement Agreement. Accordingly, pursuant to § 40-6-109(5), C.R.S., and Commission Rule 1403,<sup>85</sup> the Application, as modified by the Settlement Agreement, will be considered under the modified procedure, without a formal hearing.

## 3. Settlement Agreement

51. The Settlement Agreement and the settlement testimony submitted by Public Service adequately addresses the issues raised by Staff concerning the Application in this proceeding. The Settlement Agreement's increased information-sharing and meetings between the parties should improve their understanding of the transition of Public Service's system to renewables, the impact of that transition on system operations overall, and how that impact on system operations is affecting ECA expenses. The end result may be alterations to system operations that decrease ECA expenses and improved ECA applications that lead to more efficient Commission proceedings addressing those applications.

52. As stated above, while the OCC is not a signatory to the Settlement Agreement, it does not oppose it. In its Comments, the OCC refused to state whether it would be in the public interest to approve the Application, as modified by the Settlement Agreement. However, at that

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<sup>84</sup> See *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

<sup>85</sup> 4 CCR 723-1.

time, the OCC had only reviewed draft testimony by Public Service addressing the issues raised by the OCC in its answer testimony. In its Comments, the OCC stated that the addition of Public Service's anticipated settlement testimony "may . . . support a decision that the Settlement Agreement is in the public interest."<sup>86</sup>

53. Public Service has now filed its settlement testimony, which, as described above, provides detailed responses to the disallowances proposed in the OCC's answer testimony. The OCC has not filed anything with the Commission stating that Public Service's settlement testimony varies in any material way from the draft testimony the OCC reviewed, or otherwise does not support the conclusion that the Settlement Agreement is in the public interest. The ALJ finds and concludes that Ms. Trammel's settlement testimony adequately addresses the disallowances proposed by the OCC.

54. Based upon substantial evidence in the record as a whole, the ALJ finds and concludes that the parties have satisfied their burden of establishing that the Settlement Agreement is just and reasonable and is in the public interest. The ALJ also finds and concludes that approval of the Application, as modified by the Settlement Agreement, is in the public interest. The ALJ will approve the Settlement Agreement without material modification and will grant the Application, as modified by the Settlement Agreement.

## **II. ORDER**

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

1. The Unopposed Joint Motion to Approve Comprehensive Settlement Agreement and Request for Waiver of Response Time (Unopposed Joint Motion) filed on December 18, 2020

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<sup>86</sup> OCC's Comments at 8.

by Public Service Company of Colorado (Public Service) and Trial Staff of the Colorado Public Utilities Commission is granted, consistent with the discussion above.

2. The request to waive response time to the Unopposed Joint Motion is denied as moot.

3. Consistent with the findings, discussion, and conclusions in this Decision, the Unopposed Comprehensive Settlement Agreement filed as Hearing Exhibit 106 on December 18, 2020, is approved without material modification. The Unopposed Comprehensive Settlement Agreement is attached to this Decision as Appendix A.

4. Proceeding No. 20A-0327E is closed.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion within 20 days after service, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.



7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Doug Dean'.

Doug Dean,  
Director