Decision No. C22-0678

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0625EG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2022–2025 RENEWABLE ENERGY COMPLIANCE PLAN.

DECISION APPROVING UNOPPOSED COMPREHENSIVE SETTLEMENT AGREEMENT WITH ADDITIONS AND CLARIFICATIONS; GRANTING APPLICATION FOR APPROVAL OF 2022-2025 RENEWABLE ENERGY PLAN AS MODIFIED BY THE SETTLEMENT AGREEMENT; AND AUTHORIZING COMPLIANCE FILINGS

Mailed Date: November 3, 2022
Adopted Dates: October 5, 2022, October 19, 2022, and October 26, 2022

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Colorado Public Utilities Commission (Commission) grants the Application for Approval of the 2022-2025 Renewable Energy Compliance Plan (Application, and RE Plan) filed by Public Service Company of Colorado (Public Service or the Company), as modified by the Unopposed Comprehensive Settlement Agreement filed on September 1, 2022, and with further additions and clarifications set forth by the Commission.

B. Procedural History

2. The entire procedural history of this Proceeding is provided in previous decisions and is repeated here only to the extent necessary to put the above-captioned decision in context.

3. On December 20, 2021, Public Service filed its Application and direct testimony from six witnesses, as well as the three volumes of its RE Plan. It also filed a Motion for

Issuance of Waivers and Variances Necessary to Implement its 2022-2025 Renewable Energy Compliance Plan (Motion for Waivers and Variances).

4. In its Application, Public Service requested that the Commission approve *inter alia*: its proposed capacity levels, incentive levels, and programming proposals for its Solar*Rewards, Solar*Rewards Community, and Solar*Rewards Residential IQ On-Site Solar programs; its proposed capacity levels for Company-owned community solar gardens (CSGs); its proposed Off-Site Solar capacity and programming proposals; its proposed Renewable*Connect capacity and programming proposals; its request to maintain collections from the Renewable Energy Standard Adjustment (RESA) at the one percent collection level; and its request to defer expenses associated with preparing and litigating this Proceeding.

5. The Commission deemed the Application complete, set the matter for hearing *en banc*, and established parties by Decision No. C22-0137-I, issued March 4, 2022. The Colorado Office of the Utility Consumer Advocate (UCA), the Colorado Energy Office (CEO), and Trial Staff of the Commission (Staff) intervened by statutory right. The City of Boulder (Boulder), the City and County of Denver (Denver), the Colorado Solar and Storage Association and the Solar Energy Industries Association (jointly, COSSA/SEIA), Energy Outreach Colorado (EOC), the Environmental Justice Coalition,[1] SunShare, LLC (SunShare), and Western Resource Advocates (WRA) intervened on motion.

6. By Decision No. C22-0176-I, issued March 24, 2022, the Commission deferred a decision on the merits of the Motion for Waivers and Variances, in the process denying the

[1] The Environmental Justice Coalition is comprised of Colorado Latino Forum, Cultivando, GreenLatinos, GRID Alternatives, Mothers Out Front, National Association for the Advancement of Colored People (NAACP) Denver Branch, Vote Solar, and Womxn from the Mountain.

Motion to Bifurcate Renewable*Connect-NG from this Proceeding filed by Staff on February 23, 2022.

7. By Decision No. C22-0216-I, issued April 7, 2022, the Commission adopted a procedural schedule for this Proceeding which included an evidentiary hearing from September 8-15, 2022. The Commission also extended the deadline for a decision by an additional 130 days, consistent with § 40-6-109.5(1), C.R.S.

8. Pursuant to Decision No. C22-0196-I, issued March 28, 2022, Public Service filed supplemental direct testimony on May 11, 2022. Answer testimony was filed on July 11, 2022, by UCA, CEO, Staff, Boulder, Denver, COSSA/SEIA, EOC, the Environmental Justice Coalition, and WRA. On August 12, 2022, Public Service filed rebuttal testimony as well as recent Solar*Rewards Community bid data responsive to Decision No. C22-0445-I, issued July 29, 2022. CEO, Staff, COSSA/SEIA, Denver, EOC, Environmental Justice Coalition, and WRA filed cross-answer testimony on August 12, 2022.

9. On August 25, 2022, Public Service filed a Notice of Ongoing Settlement Discussions, stating that parties were engaged in robust, good-faith discussions, and on August 29, 2022, it filed an update that all or most parties were very close to reaching a settlement in principle. On August 30, 2022, Public Service filed a Notice of Non-Unanimous Comprehensive Settlement in Principle as well as an unopposed motion to amend the procedural schedule, a request for a waiver of response time, and a request for an expedited decision. By Decision No. C22-0517-I, issued September 6, 2022, the Commission vacated the September 8, 9, and 12 evidentiary hearing dates.

10. On September 1, 2022, Public Service filed an Unopposed Joint Motion to Approve Unopposed Comprehensive Settlement Agreement (Joint Motion), along with a further

request to amend the procedural schedule and a request for a waiver of response time. The Unopposed Comprehensive Settlement Agreement (Settlement Agreement) and Attachment 1 to the Settlement Agreement are attached as **Attachment A** to this Decision. Parties to the Settlement Agreement are Public Service, Staff, CEO, UCA, the Environmental Justice Coalition, Denver, EOC, WRA, and COSSA/SEIA (collectively, the Settling Parties). Boulder and SunShare take no position on the Settlement Agreement. The Settling Parties assert that the Settlement Agreement represents a comprehensive resolution of issues in this Proceeding. Testimony in support of the Settlement Agreement was timely filed on September 7, 2022, by Public Service, Staff, CEO, COSSA/SEIA, WRA, and the Environmental Justice Coalition.

11. By Decision C22-0531-I, issued September 8, 2022, the Commission further vacated the September 13, 2022 evidentiary hearing date and directed Public Service to file testimony regarding community solar garden bill credits, enrollment of customers within disproportionately impacted communities, and other items. Public Service timely filed supplemental settlement testimony on September 12, 2022.

12. The Commission conducted an evidentiary hearing on the Settlement Agreement on September 14, 2022. Hearing Exhibit 1200 is the spreadsheet that reflects the most recent filed versions of all Hearing Exhibits and their attachments, as they appear in the Commission's administrative record for this Proceeding. Hearing Exhibit 1200, as well as the contents of the latest versions of the listed Hearing Exhibits that had been filed electronically in the Commission's administrative record, were admitted into evidence without objection. During the course of the hearing, additional Hearing Exhibits 114-Rev 1, 115, and 116 and their attachments were admitted into evidence without objection. At the conclusion of the oral testimony, the Commission closed the evidentiary record.

13. On October 5, 19, and 26, 2022, the Commissioners deliberated on Public Service's application, as modified by the Settlement Agreement proposed for approval, and discussed further additions and clarifications, resulting in this Decision.

C. Public Comments

14. The Commission directed Public Service to confer with parties and to propose a procedural schedule, including at least one public comment hearing, by Decision No. C22-0137-I, issued March 4, 2022. In its Unopposed Motion to Approve Consensus Procedural Schedule and Vacate Prehearing Conference, filed April 4, 2022, Public Service incorporated recommendations from the Environmental Justice Coalition regarding the scheduling of public comment hearings. By Decision No. C22-0315-I, issued May 20, 2022, the Commission adopted certain of the Environmental Justice Coalition's recommendations and scheduled two remote public comment hearings for which simultaneous Spanish language interpretation was provided. These hearings were held on June 21, 2022, in advance of answer testimony, and September 6, 2022, in advance of an evidentiary hearing. The Commission also received written comments throughout this Proceeding.

15. While the Commission does not summarize every comment submitted by interested persons, the Commission has reviewed all public comments submitted, whether verbally or in writing. Pursuant to Rule 1509(a) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, public comments are not to be considered evidentiary in nature, but they provide a means for interested persons to encourage the Commission in its exercise of discretion.

16. Interested persons speaking at public comment hearings were generally supportive of the Commission approving the Settlement Agreement. One commenter

recommended the Commission encourage the transition to renewable energy to happen as quickly as possible. Other commenters supported the Settlement Agreement's increased investments to income-qualified customers and disproportionately impacted communities. Some commenters recommended that the Commission direct the Company to increase the RESA from one percent to two percent.

17. On September 14, 2022, Laborers' Local 720 (Local 720) submitted a public comment stating that it represents over 2,000 unionized construction laborers that work for construction contractors serving Colorado electric and gas utilities. Local 720 expresses concerns that the Settlement Agreement includes fewer Company-owned community solar gardens, for which there are Project Labor Agreements (PLAs), while more capacity has been set aside for third-party community solar gardens. Among other recommendations, Local 720 recommends that the Commission integrate Best Value Employment Metrics (BVEM) as set forth under § 40-2-129, C.R.S., into the community solar gardens program.

D. Terms of the Settlement Agreement

18. The Settlement Agreement is both unopposed and comprehensive. Certain key provisions are summarized below.

1. Summary of the Settlement Agreement

19. In its direct case, Public Service proposed that the RE Plan would result in approximately 520 MW of distributed generation, community solar gardens, and battery storage programs at a cost of $7 million in incentives per year. The Settlement Agreement sets forth approximately 515 MW of distributed generation, community solar gardens, and battery storage programs at a cost of approximately $10.6 million in incentives and related budget per year. The Settlement Agreement also transitions certain programs from capacity targets to annual budget

caps with estimated capacity in order to establish clearer costs, and generally proposes that budget and/or capacity be rolled over year-to-year within the RE Plan period where it is undersubscribed. Attachment 1 to the Settlement Agreement summarizes the budgets and capacities associated with all programs.

2. Income-Qualified Customers and Disproportionately Impacted Communities

20. A significant focus of the Settlement Agreement is on programs that provide rebates, incentives, and other funding related to income-qualified (IQ) customers and disproportionately impacted communities (DI Communities). The Settlement Agreement uses the term IQ customers, drawing from "income-qualified utility customer" as defined based on three different income eligibility thresholds: household income below 200 percent of the current federal poverty line; household income at or below 80 percent of the area median income; or otherwise meets the income eligibility criteria set forth in Department of Human Services rules adopted pursuant to § 40-8.5-105, C.R.S.[2] In part, a DI Community is a community located in a Census block group where the proportion of households that are low income, identify as minority, or are housing cost-burdened is greater than 40 percent.[3] Because the Commission has not yet completed the rulemaking contemplated by Senate Bill 21-272,[4] DI Communities are not fully defined.[5] Pursuant to the Settlement Agreement, Public Service agrees to use the Colorado EnviroScreen mapping tool[6] developed by Colorado Department of Public Health and

[2] § 40-3-106(1)(d)(II), C.R.S.

[3] § 40-2-108(3)(d), C.R.S.

[4] § 40-2-108(3)(b) and (c)(I), C.R.S.

[5] Interested persons may participate in the Commission's pre-rulemaking process regarding Senate Bill 21-272 implementation. Visit puc.colorado.gov/equity for more information.

[6] *See* https://cdphe.colorado.gov/enviroscreen.

Environment to identify DI Communities for inclusion in the 2022-2025 RE Plan, unless and until the Commission adopts rules or authorizes the Company to use an alternative method.

21. Accordingly, certain of the "IQ/DI Community" programs set forth in the Settlement Agreement are only available to customers whose income has been verified as being eligible to participate, regardless of their location. This includes, for example, the Solar*Rewards Residential IQ On-Site Solar Program administered by CEO consistent with the federal Weatherization Assistance Program. Other programs are available to customers either based on income eligibility or based on their location within a geographically identified DI Community mapped using Colorado EnviroScreen.[7]

22. While approximately $3.6 million or 52 percent of one-year incentives were proposed for IQ/DI Community customers in Public Service's direct case, the Settlement Agreement proposes to allocate $8.2 million or 77 percent of one-year incentives to these IQ/DI Community customers. Per Table 1 of ¶ 2.4 of the Settlement Agreement, the one-year average incentives include $500,000 for On-Site Solar; $513,403 for IQ On-Site Solar administered by CEO; $700,000 in adders for Commercial & Industrial (C&I) On-Site Solar*Rewards; $406,250 for Battery Connect storage incentives; approximately $4.6 million for third-party and Company-owned community solar garden programs; $250,000 for workforce training; and $1,187,500 for community outreach and budget flexibility. These programs are described more specifically below.

23. The Settlement Agreement also commits Public Service to develop and execute a comprehensive IQ/DI Community Engagement and Outreach Plan (Outreach Plan) as described in its rebuttal testimony. The Outreach Plan will be developed through consultation with relevant

stakeholders, including community-based organizations (CBOs) representing IQ/DI Community interests. It will explore barriers to IQ/DI Community customer participation in relevant programs. The Outreach Plan will incorporate a list of preferred organizations that serve IQ/DI Community customers and that can be contracted for plan development, education, outreach, and program implementation; not less than 15 percent of the total IQ/DI Community Outreach and Flexibility budget each year shall directly support CBO partners. Public Service will report on progress through its annual RES compliance reports, and it may seek to expand the scope of the Outreach Plan to cover other customer program areas, such as demand-side management or vehicle electrification, with funds from sources other than the RESA.

24. The Settlement Agreement incorporates $4.75 million in flexible budget to implement IQ/DI Community programs developed over the course of this RE Plan, given future rulemakings and the Outreach Plan have yet to be completed. This budget could be allocated to outreach and engagement, education, and CBO and other program implementation partnerships. Potential uses include education programs and culturally and linguistically appropriate outreach.

25. The Settlement Agreement commits Public Service to earmark $250,000 annually from its IQ/DI Community budget to support workforce development programming for IQ customers and DI Communities. This training is to focus on barriers specifically for IQ customers and DI Communities, including but not limited to apprenticeship.

26. As part of its annual RES compliance report, Public Service commits to provide certain data to the extent it is technically feasible and can be reasonably obtained, including: IQ/DI Community participation in renewable energy and storage programming by Census block group and program; a map of Census block groups within its service territory showing

[7] *See*, *e.g.*, Hearing Exhibit 114 Rev. 1, Supplemental Settlement Testimony and Attachment of Jack W.

participation rates and which Census block groups are classified as DI Communities; program participation and spend; interest based on customer applications and geographic spread within the Company's service area; and barriers to program participation and paths to addressing them.

3. Solar*Rewards Programs

27. Public Service commits to allocate 2 MW of residential Solar*Rewards capacity for IQ/DI Community customers with an upfront $1/W incentive for on-site projects up to 7 kW in size and a $500,000 annual incentive cap.

28. For the Commercial & Industrial (C&I) Solar*Rewards program, the Settlement Agreement reduces the minimum system size to 8 kW_{AC} and sets a process for program modifications depending on capacity uptake. Public Service will also include a $700,000 annual maximum budget for IQ/DI Community upfront incentives of $0.15/W for C&I customers who serve IQ customers and DI Communities, on top of Standard Offer performance-based incentives.

29. The Settlement Agreement increases the incentive budget for Renewable Battery Connect (formerly Solar*Rewards Battery Connect) to $6.5 million for 10 MW of battery storage, including a $1.6 million carve-out for IQ/DI Community customers over the four years of the RE Plan. Public Service will increase the upfront incentive to $500/kW of installed battery capacity for residential and small commercial customers up to 50 percent of overall battery cost; for IQ/DI Community customers, this will be $800/kW and up to 75 percent of overall battery cost. Energy storage systems must be configured to be 100 percent charged by renewable energy. Public Service will increase dispatch events up to 60 annually and commits to use good-faith efforts to minimize the risk of calling dispatch events in advance of severe weather events. The

Ihle (September 12, 2022), at 11:14-13:24.

Settlement Agreement also lays out commitments regarding stakeholder engagement and paths to modify the program depending on capacity.

4. Off-Site Distributed Generation

30. The Settling Parties recommend the Commission adopt the Company's Off-Site Distributed Generation (DG) program as set forth in its direct case but with modifications to the Off-Site DG bill credit. The Settlement Agreement states that the bill credit would be calculated based on the average retail rate for each rate class, less reasonable costs for transmission, distribution, and "public benefits" riders. Public Service is to file a compliance advice letter on less than statutory notice after a final order in this Proceeding and to make a filing before the end of 2023 to establish 2024 and 2025 program capacity based on market demand.

5. Solar*Rewards Community

31. The Settlement Agreement revises the structure of the Solar*Rewards Community (S*RC) CSG program going forward. Public Service proposes to implement a first quarter 2023 Request for Proposals (RFP) process followed by a Standard Offer program to initiate after the conclusion of the RFP process, in 2023 or later. Both the RFP and the Standard Offer programs include a "general" category and a separate IQ/DI Community category.

32. The RFP would be for an estimated 70 MW with a $12 million maximum annual cost (including the cost of subscriber bill credits and developer adjustments). For the "general" RFP program, there would be a $3.6 million maximum annual allocation of RESA funding for an estimated 35 MW. Each project would need to be compliant with Commission Rule 3877, requiring at least 50 percent of customers to be residential, agricultural, small commercial, or income-qualified (RASCIQ). While setting a cost cap, Public Service estimates that the general

RFP would result in negative Renewable Energy Credit (REC) payments of approximately $173,100 in year one.

33. For the IQ/DI Community RFP Program, there would be a $8.4 million maximum annual allocation of RESA funding for an estimated 35 MW. Each project would be required to have 100 percent IQ/DI Community subscribers. All projects must deliver at least 30 percent net savings to subscribers, as measured by the difference between the bill credit and the subscription fee. As clarified at hearing, at least 50 percent of the capacity must be delivered as fully donated (i.e., no subscriber fee) subscriptions for direct-billed residential customers.[8] Accordingly, IQ/DI Community subscribers need not pay subscriber fees where they are income-qualified but may pay such fees if they are located in DI Communities or serve IQ customers; but are not direct-billed (i.e., nonprofit assistance providers).

34. After the conclusion of the RFP process, awarded capacity from the general and IQ/DI Community RFPs will be used to set an index for 2024-2025 Standard Offer pricing based on a weighted average methodology. The Standard Offer will have an overall $35.8 million maximum annual allocation of RESA funding. For the General Standard Offer, again meeting RASCIQ requirements, the Settlement Agreement proposes a maximum annual allocation of RESA funding of $10.8 million for approximately 105 MW. While setting a cost cap, Public Service estimates that the General Standard Offer would result in negative REC payments of approximately $519,300 in one year. For the IQ/DI Community Standard Offer, again meeting the subscriber and net savings requirements of the RFP, the Settlement Agreement proposes a maximum annual allocation of RESA funding of $25 million for approximately 105 MW.

[8] *See* 9/14/2022 Hrg. at 89:6-10.

35. Public Service may develop and own as self-build or through Build-Own-Transfer arrangements a total of 20 MW_{AC} of IQ/DI Community CSG capacity with a one-year cost maximum of $4.8 million.

36. The Settlement Agreement also adopts practices to streamline administration of CSG programs. The Settling Parties agree that CSG subscriptions donated to IQ/DI Community customers are considered a form of energy assistance for which signed energy assistance data releases may be used to facilitate the subscription process. Public Service will eliminate the Subscriber Agency Agreement for IQ customers and instead provide a fact sheet to IQ subscribers in English and Spanish. Public Service also commits to work with IQ/DI Community stakeholders to resolve billing system software issues, improve S*RC portal usability, enhance marketing, and outreach materials, and continue to engage in good faith to smooth enrollment.

37. The Settlement Agreement specifies that interconnection requirements will be based on a "hybrid" approach which requires a signed Interconnection Agreement as a prerequisite for Standard Offer capacity but not for participating in the RFP process. No site moves will be permitted for projects awarded through either process. Specifically for the Standard Offer, the developer must have a fully executed lease option, deed, or option to purchase, and have secured all non-ministerial permits. The Settling Parties also agree to work collaboratively to resolve issues in this new interconnection approach, and state that Public Service may use RESA administrative budget for a one-time information technology upgrade for interconnection studies and hosting capacity analysis if needed.

38. The Settlement Agreement includes certain progress check-ins to assess CSG programs. First, if the RFP results in an indicative total cost that is not forecasted to achieve at least 280 MW_{AC} of CSG capacity over the course of the RE Plan, parties are to confer, and

Public Service agrees to file a motion to adjust the budget and/or Standard Offer acquisition process. Second, if within 12 months of the Standard Offer opening there are potential modifications needed to address barriers or enable additional capacity, the Company will propose changes through the 60/90-Day Notice process or through an appropriate motion.

6. Renewable*Connect Programs

39. With regard to Renewable*Connect 1.0, among other actions, Public Service will adjust the earnings sharing mechanism, make a compliance tariff filing on less than statutory notice, and report costs and revenues (including data related to curtailment and earnings) in its annual RES compliance report.

40. Public Service agrees to withdraw its Renewable*Connect 2.0 proposal from this Proceeding without prejudice and may re-file an application for up to 300 MW of resources with a request for expedited approval. Public Service agrees to prioritize pairing generation resources with battery storage as part of its proposal and to consider curtailment reductions, the social cost of carbon, and the potential for longer-duration battery storage as part of exploring increased grid value. Should Public Service seek to leverage the upcoming Phase II RFP process resulting from Proceeding No. 21A-0141E, it will update relevant bid documents to put bidders on notice that their bids could be used for purposes other than Clean Energy Plan compliance, and it may select a project or projects for Renewable*Connect 2.0 from bids advanced to computer modeling. Settling Parties recognize there is customer interest in Renewable*Connect 2.0 and that as a voluntary product offering, it should not negatively impact non-participants.

41. The Settling Parties agree that the Commission should approve the Renewable*Connect Month-to-Month program as set forward in the Company's direct case with

flexibility for customers to enter into longer contracts, and that the Commission should approve the Renewable*Connect Community program as set forth in the Company's direct case.

42. The Settlement Agreement commits Public Service to withdraw its Renewable*Connect Natural Gas program proposal from this Proceeding without prejudice and authorizes it to refile the proposal as a voluntary Clean Heat Plan program pursuant to § 40-3.2-108, C.R.S., or through a separate filing alongside other voluntary decarbonization programs.

7. Stakeholder Engagement

43. The Settlement Agreement commits the Company to adopt a 60/90-Day Notice progress similar to that used in other contexts, such as demand-side management. 60-Day Notices would apply to programmatic changes to approved IQ/DI Community offerings while 90-Day Notices would apply to new RE Plan IQ/DI Community offerings. Public Service is to engage in outreach prior to noticing changes through the 60/90-Day Notice process, and Staff retains the ability to file Notices of Deficiency to identify issues that should be brought to the Commission's attention. The Settlement Agreement proposes that changes to Renewable Battery Connect dispatch procedures, a pay-for-performance pilot, and a Community-Owned IQ/DI Community CSG Standard Offer proposal are among the concepts that could come forward through the 60/90-Day Notice.

44. Public Service will also engage CBOs and interested stakeholders in the program design process through quarterly stakeholder meetings or other dedicated meetings.

45. Public Service also commits to work with stakeholders to explore the concept of a Community Resiliency Hub and to propose such an offering or alternatively to bring forward

another energy storage offering focused on IQ/DI Community customers in its next RE Plan or a separate application.

8. Cost Recovery and the Retail Rate Impact

46. In its direct case, Public Service proposed certain modifications for how it modeled costs attributable between the RESA and the Electric Commodity Adjustment (ECA). The Settling Parties agree that the Commission should approve the proposals put forth in the Settlement Agreement, including to lock down modeled incremental costs for "Group 2" resources for life, and for "Group 3" resources through 2025 with actual costs and modeled incremental costs reported in its next RE Plan filing. Additionally, the Settling Parties agree that Public Service should determine avoided costs for renewable energy resources by average $/MWh for resource categories including wind, solar, and storage, rather than by individual resources.

47. The Settling Parties also agree that the RESA should continue to be collected at one percent through 2030, although may advocate for adjustments after the conclusion of the 2022-2025 RE Plan.

9. Interactions with Other Proceedings

48. The Settlement Agreement addresses interactions with Proceeding No. 21A-0141E, the Company's Electric Resource Plan/Clean Energy Plan. Public Service commits to include updated capacity levels in the update to its Loads and Resources Table in Phase II. It states that incremental and avoided costs for retail distributed generation will be established following Phase II. The Settlement Agreement also defers issues related to curtailment to a stakeholder group approved by Decision No. C22-0459, issued August 3, 2022, in that proceeding (¶¶ 379-80).

49. The Settling Parties recommend that, prior to the Company's next RE Plan being filed, the Commission open a miscellaneous proceeding to explore community solar garden reforms to enhance emission reductions and grid value that will support Colorado's clean energy transition. The Settling Parties also recommend the Commission initiate a rulemaking to address CSG interconnection, considering cluster studies, and to take steps to evaluate whether CSGs should be subject to curtailment and under what standards.

10. Additional Settlement Provisions

50. Public Service commits to exploring emerging issues, including the potential for flexible interconnection and the technical requirements, costs, and processes to track hourly RECs.

51. The Settling Parties recommend the Commission grant the Company's requests for waivers and variances, including a waiver of Rule 3657(a) regarding the requirement that an RE Plan be filed with an electric resource plan; variances from the Company's tariffs and Rules 3652(ff), 3664(a), and 3878(b) to allow it to size retail renewable DG to supply up to 200 percent of a net metering customer's or CSG subscriber's reasonably expected average annual electricity consumption at all properties; a waiver of Rule 3661(d) to use up to 15 percent of its RESA collections to cover administrative costs in this RE Plan; and a partial waiver of paragraph 21 of Decision No. C20-0700 regarding extension of the RESA surcharge beyond 2022.

52. As to model contracts presented in Volume 3 of the Company's RE Plan, the Settlement Agreement adopts certain modifications and acknowledges that they should be considered model contracts subject to reasonable modification through negotiation.

53. The Settling Parties agree that Public Service should be permitted to file all necessary tariff changes to implement the Settlement Agreement and the Commission's final

decision in this Proceeding through one or more compliance advice letters on less than statutory notice.

54. The Settling Parties agree that the Commission should grant Public Service's request for a deferral of legal expenses related to litigating this Proceeding, as set forth in its direct case.

E. Findings and Conclusions

1. Background and Context

55. The Commission previously approved Public Service's 2020-2021 RE Plan in Proceeding No. 19A-0369E.[9] The 2020-21 RE Plan was characterized as a "bridge plan" to facilitate a shift from more traditional renewable energy planning to a different plan designed to support state clean energy targets set forth under Senate Bill 19-236.[10] By Decision No. C21-0838, issued December 30, 2021, the Commission extended Public Service's 2020-2021 RE Plan until such time as implementation could commence for the 2022-2025 RE Plan.

[9] Decision Nos. C20-0289, issued April 28, 2020, and C20-0431, issued June 10, 2020.

[10] Recommended Decision No. R20-0099, issued February 14, 2020, at ¶ 30.

56. In Proceeding No. 19R-0096E, the Commission solicited comments as to whether it should amend its rules related to electric resource planning and related areas. Decision No. C20-0661-I, issued September 15, 2020, severed the modification of RES and net metering rules from that proceeding and directed that they would be addressed through a separate rulemaking, which has not yet been initiated (¶ 5). Accordingly, Public Service's Application is filed under the currently effective RES rules at Rule 3650 *et seq*., 4 CCR 723-3, of the Commission's Rules Regulating Electric Utilities.

57. Meanwhile, legislative changes have continued to impact the RES, with several changes pertinent to this Proceeding being adopted in the 2021 legislative session. Among other steps, Senate Bill 21-261 defines renewable energy storage[11]; requires qualifying retail utilities (QRUs) to issue one or more standard offers to interconnect and net meter off-site, customer-owned distributed generation[12]; and encourages QRUs to design rebates and other incentive programs to allow customers of all income levels to obtain the benefits of distributed generation and energy storage.[13] Senate Bill 21-272 further states that the Commission shall require QRUs to plan their expenditures to prioritize renewable energy investment and programs for low-income customers and disproportionately impacted communities prior to reaching the retail rate impact set forth as part of the RES, and specifically to set aside no less than 40 percent of such expenditures for programs, incentives, and other direct investments.[14]

[11] § 40-2-124(1)(a)(VII.5), C.R.S.
[12] § 40-2-124(1)(e)(I)(E), C.R.S.
[13] § 40-2-124(1)(e)(IV), C.R.S.
[14] § 40-2-124(1)(g)(I)(D), C.R.S.

2. Standard of Review for Settlement Agreement

58. Rule 1408(a), 4 CCR 723-1, of the Commission's Rules of Practice and Procedure states that the Commission encourages the settlement of contested proceedings. However, the settling parties have the burden of proving by a preponderance of the evidence that the agreed-to settlement is just and reasonable, and in the public interest. *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984). This is the standard of review we apply to the Settlement Agreement.

3. Consideration of the Settlement Agreement

59. We find good cause to approve Public Service's Application as modified through the Settlement Agreement, with additions and clarifications as discussed in this Decision. We find the Settlement Agreement reflects an agreement between diverse parties which reflects significant time and effort to evolve RES compliance in Colorado. We describe below important factors in our consideration of the Settlement Agreement as being in the public interest, with clarifications as to our expectations regarding implementation in certain areas.

60. Significantly, the Settlement Agreement directs an unprecedented level of RESA funding toward IQ customers and DI Communities, in recognition of new statutory requirements and evolving considerations around the role of utility programs in environmental justice and equity. Recognizing that the Commission must engage in further rulemaking related to equity pursuant to Senate Bill 21-272, the Settlement Agreement presents a reasonable interim resolution of the requirement that at least 40 percent of certain expenditures should be directed to programs, incentives, or other direct investments benefitting low-income customers and DI Communities.

61. At hearing, we inquired about plans on how best to reach those individuals and organizations with the greatest need for financial assistance or the greatest barriers to participating in programs, and therefore whether applying program eligibility based on a customer's location within a DI Community was sufficiently nuanced. Witnesses at hearing provided support for the eligibility practices proposed under the Settlement Agreement,[15] but we anticipate that just as the Outreach Plan evolves, so will practices regarding program enrollment. Accordingly, we encourage Public Service to continue to work with IQ/DI Community stakeholders to refine the process of enrolling customers in DI Communities and we direct the Company to report on any adjustments to or refinements to enrollment practices in its annual RE compliance reports, along with the information about participation by Census block group which it has committed to provide.

62. Furthermore, to promote transparency, we also direct Public Service to submit a copy of its Outreach Plan with the first annual RE compliance report after its completion, which was agreed-to by a Company witness at hearing. We further clarify that Public Service should include updates on the Outreach Plan in subsequent RE compliance reports to the extent it evolves, along with other updates on its efforts and progress consistent with paragraph 74 of the Settlement Agreement.[16]

63. A significant and related component of the Settlement Agreement is its funding for workforce development, with its focus on IQ/DI Community barriers. The Settlement Agreement incorporates a $250,000 workforce training budget which is designed to address barriers faced by IQ/DI Community individuals and which may include apprenticeship programs.

[15] *See*, *e.g.*, 9/14/2022 Hrg. at 97:13-98:16.
[16] 9/14/2022 Hrg. at 41:5-18.

While wholesale eligible energy resources acquired for compliance with the RES through Public Service's Electric Resource Plan as approved in Proceeding No. 21A-0141E must incorporate BVEM requirements, § 40-2-129(3), C.R.S., excludes retail distributed generation programs such as CSGs[17] from the BVEM framework. But in consideration of LL720's public comment, we direct Public Service to collect from winning CSG bidders, certain workforce information so that we can start to develop a better understanding of this issue.

64. First, we set this requirement for winning bidders of over 5 MW, which is a sufficient scale so that additional reporting costs would not significantly impact bid results, and we require information only for winning CSG bids to the extent it is commercially reasonable. This information should not be a factor in evaluation of bids. Specifically, we direct Public Service to seek information from winning bidders about the number of in-state versus out-of-state workers, the availability of worker training programs, and a comparison of wages and benefits to industry-standard wages and benefits. Public Service shall provide this information in annual RE compliance reports as CSG projects are completed and information is available.

65. In addition to directing benefits to IQ/DI Community customers, the Settlement Agreement also continues the transition to valuing grid benefits by increasing customer storage programs as well as committing Settling Parties to consider community resilience programs and coupling future Renewable*Connect resources with storage. We are pleased to see the increased funding for ratepayer battery programs and appreciated the clarifications provided by witnesses at hearing as to program structure.

66. Finally, the Settlement Agreement provides stability for the distributed solar and storage industry through 2025 while promoting reasonable budget restraint through the transition

[17] *See* § 40-2-127(2)(b)(I)(B), C.R.S.

to budget caps rather than capacity caps, and appropriate incorporation of competitive processes. The use of an RFP process to establish appropriate levels for the Standard Offer programs has the potential to leverage competitive pressures to promote budget discipline.

67. That said, the Settlement Agreement incorporates a significant level of CSG capacity—70 MW estimated for the RFP programs and 210 MW estimated for the Standard Offer programs. Even with the budget caps proposed, Attachment 1 to the Settlement Agreement projects the cost of those CSG programs for this Settlement Agreement alone to be $3.4 million in year-one incentives, $269 million in incentives over 20 years, and $687 million in bill credits over 20 years. Given near-term uncertainties ranging from supply chain issues to the implementation of the Inflation Reduction Act, we find good cause to add a further checkpoint as CSG programs move forward.

68. Consistent with the terms of the Settlement Agreement, we authorize Public Service to acquire through the proposed bidding process the contemplated resources from CSG developers. After the initial RFP process is complete, Public Service may move forward with contract negotiations with the winning CSG bidders. However, before initiating Standard Offer programs, we direct the Company to file a motion in this Proceeding that seeks a determination from the Commission that the final non-participant costs and IQ and DI Community customer acquisition approaches are reasonable and that the company can move forward with the standard offer that the Settlement Agreement contemplates as following the competitive process. The motion must provide information about the prices received during the competitive process; how the Company proposes to calculate the Standard Offer prices; a summary of customer acquisition plans, including for how developers propose to enroll IQ/DI Community customers; and an overview of product offerings proposed by CSG developers. The Commission will review those

areas for reasonableness and consistency with the expectations of the Settlement Agreement as to the costs of CSG acquisitions and the benefits being provided to IQ/DI Community customers.

4. Cost Recovery Provisions

69. By Decision No. C20-0700, issued October 2, 2020, in Proceeding No. 20AL-0191E, the Commission stated that if Public Service files an advice letter to continue the RESA after December 31, 2022, such filing would trigger a "holistic examination of the RESA surcharge" (¶ 21). In its Motion for Waivers and Variances, Public Service requested a "potential waiver" from this paragraph if the Commission deems it necessary, given it seeks a determination on continuing the RESA in this Proceeding rather than through a separate advice letter, and explaining that its testimony provides a sufficient evidentiary record to satisfy the substantive requirements of Decision No. C20-0700.

70. Paragraph 64 of the Settlement Agreement states that the Settling Parties agree that the RESA should continue to be collected at one percent through 2030. In its direct case, Public Service presented information regarding the calculation of incremental costs recovered from the RESA and avoided costs recovered from the ECA. Notably, the locking of incremental costs from prior RE Plans and utility electric resource plans have resulted in actual costs of resources being recovered through the ECA, and negative incremental costs being subtracted from positive incremental costs—such as the program costs set forth in the Settlement Agreement—resulting in higher RESA balances to pay for renewable energy projects.[18] At hearing, Witness Wishart expanded on testimony and explained that negative incremental costs may continue to be negative, thus offsetting positive incremental costs, given increasing gas

[18] Hearing Exhibit 110, Wishart Rebuttal, at 25:18-22.

prices, the impact of the Inflation Reduction Act and reduced costs for renewable resources, and other factors.[19]

71. The Company's rebuttal testimony, following on critique by Staff and others, acknowledged that the RESA incremental cost framework may no longer be significantly relevant as resource economics have changed and the State of Colorado has transitioned to a focus on decarbonizing the energy sector at significantly higher levels than those established by the RES statutes.[20] However, the Company also points to its obligation to follow Rule 3661 modeling requirements as it allocates costs across different recovery mechanisms.

72. The Commission is presented with a timing challenge. The Company has stated multiple times that the RESA forecast is indicative and that it may shift given the results in the Phase II Electric Resource Plan/Clean Energy Plan process that is expected to occur in 2023. Moreover, while the Company and Trial Staff were directed to explore an audit of the RESA by Decision No. R20-0099 in the prior RE Plan proceeding, they have not yet agreed to the full scope of that audit. Finally, the Commission has not yet initiated a RES rulemaking that could address the statutory retail rate impact and the allocation of costs between the RESA and other sources.

73. Given the complexity of RESA accounting and the prospect of swelling negative incremental costs—which testimony at hearing suggested could exceed positive incremental costs associated with this entire RE Plan—the evidence in this case does not quite rise to the level of the "holistic examination" of RESA accounting that was directed in Proceeding No. 20AL-0191E. We are concerned that the application of negative incremental costs may obscure

[19] 9/14/2022 Hrg. at 80:15-81:11.

[20] Hearing Exhibit 110, Wishart Rebuttal, at 6:6-7:9.

the costs of programs the Commission is being asked to approve and may result in a lack of long-term stability of either costs to ratepayers or program levels and incentives between RE Plans. Particularly as customer renewable energy programs are being leveraged as a tool to help address energy inequities, it may be appropriate to explore alternatives to how the RESA is applied to promote longer-term predictability.

74. Ultimately, with the RESA set to expire as of December 31, 2022, we must consider in the interim whether to authorize the Company to extend the RESA. Continuing customer renewable energy programs, funded by the RESA, will create benefits for IQ/DI Community customers; moreover, Senate Bill 21-272 requires QRUs to plan their expenditures to prioritize those communities through at least 2028. Accordingly, we authorize the Company to file a compliance advice letter to extend the RESA beyond 2022, but only through the duration of this 2022-25 RE Plan (*i.e.*, through December 31, 2025). When it files its next RE Plan, Public Service shall continue to produce information in support of its request for cost recovery from the RESA, consistent with the RES rules in effect at the time. To effectuate the Settlement Agreement, we grant a temporary extension of the partial waiver of ¶ 21 of Decision No. C20-0700 through the duration of this RE Plan or until such time as the Commission approves new RES rules. We further direct Public Service to file an update to RE Plan Volume II, Tables 7-2(a)-(c), projecting RESA revenues and expenditures through 2030, in this Proceeding within 30 days of the issuance of the Commission's final Phase II decision in Proceeding 21A-0141E.

75. As Public Service addressed at hearing, current accounting practices provide for "headroom" in the RESA to fund programs—headroom that may continue to rise significantly. We are concerned that current accounting practices move too far from the function of a tracking account to balance revenues and expenditures over time. We therefore direct Public Service to

present in its next RE Plan—unless the Commission promulgates RES rules which provide different direction prior to that plan being filed—at least one alternative cost recovery scenario that transitions the cost of customer programs funded by the RESA to more closely align with revenues collected by the RESA, given the concerns raised by witnesses in this Proceeding about the continued relevance of incremental cost modeling as the economics of renewable resources continue to shift compared to fossil fuels. A waiver from relevant Commission RES rules may be sought if needed.

76. Finally, acknowledging that Public Service and Staff intend to resume discussions regarding the scope of the RESA audit upon issuance of a final decision in this Proceeding, we direct them to address the audit scope and provide an update on progress to complete the audit no later than in annual RE compliance reports and review of such reports.

5. Future Proceedings Recommended by the Settlement Agreement

77. The Settlement Agreement recommends that the Commission initiate certain proceedings. First, the Settling Parties recommend that the Commission open a miscellaneous proceeding to explore CSG reforms to enhance emission reductions and grid value that will support Colorado's clean energy transition prior to the filing and approval of the Company's future RE Plans. Second, Settling Parties recommend that the Commission initiated a rulemaking to address the interconnection of CSGs and consider cluster studies in relation to current interconnection rules. As part of this rulemaking or in a separate rulemaking, the Commission should evaluate and address whether CSGs should be subject to curtailment and what compensation structure is appropriate.

78. We recognize that the Commission will address statutory changes to its RES and Net Metering Rules in the near future. In that upcoming NOPR, we expect to explore the need

for a rulemaking related to address interconnection of CSGs and also consider cluster studies in relationship to current interconnection rules. A NOPR, or potential pre-rulemaking stakeholder outreach proceeding could include addressing the interconnection of CSGs of related issues as well as suggestions from other related proceedings. This would include CSG Interconnection including transmission level, curtailment, and flexible interconnection.

6. Other Motions and Filings

79. In approving the Settlement Agreement, we find good cause to also grant the Motion for Waivers and Variances, with the clarifications previously discussed as they relate to the waiver of paragraph 21 of Decision No. C20-0700. In removing its request for approval of Renewable*Connect with an option to initiate another application, consistent with paragraph 58 of the Settlement Agreement, Public Service's request for a variance from Rule 3615(a)(III) has become moot. Public Service's other requests for waivers and variances are reasonable given statutory changes and increasing program administration complexity and are therefore granted.

80. Going forward, and for any RE effort subsequent to the completion of the 2022-2025 RE Plan, we believe it may be inappropriate to continue to separate the larger programs coming out of the RE Plan from the Electric Resource Plan process. We are increasingly concerned that qualifying retail utilities like Public Service file RE Plans subject to statutes and rules which have not kept up with evolving economic and technological trends and more recent statutory requirements. Among other changes, the significance of the RES requirement is less certain given state clean energy targets pursuant to § 40-2-125.5(3), C.R.S., and economic trends which run against the assumption that renewable energy necessarily comes at an incremental cost. Moreover, current RESA accounting practices show that revenues and

expenditures may no longer be effectively tethered and setting the RESA at a particular level may not, going forward, be an effective proxy for meeting the statutory retail rate impact test.

81. Given the scale of the customer programs being approved in this Proceeding, particularly focused on CSG capacity, we would hereby reiterate and reinforce the existing requirement that approval of any future programs where the program cumulatively exceeds $30 million or 30 MW must be sought in an Electric Resource Plan proceeding — as is already required by Rule 3615(a)(III). Where customer programs are expanding and creating the potential for large and material 20-year system costs, we hereby find that they are best evaluated in the context of an Electric Resource Plan, which provides robust opportunities to comprehensively consider comparative economic trends, emissions reductions, and other costs and benefits across a range of potential energy resources.

82. Finally, in approving the Settlement Agreement, we find good cause to direct Public Service to file all necessary tariff changes through one or more compliance letters on less than statutory notice after issuance of the final decision, consistent with paragraph 119 of the Settlement Agreement and our prior clarification regarding the RESA.

II. ORDER

A. It Is Ordered That:

1. The Unopposed Joint Motion to Approve Unopposed Comprehensive Settlement Agreement filed by Public Service Company of Colorado (Public Service) on September 1, 2022, is granted, consistent with the discussion above.

2. Consistent with the findings, discussion, and conclusions in this Decision, the Unopposed Comprehensive Settlement Agreement (Settlement Agreement) is approved, with

additions and clarifications, consistent with the discussion above. The Settlement Agreement and Attachment 1 to the Settlement Agreement are attached to this Decision as **Attachment A**.

3. The 2022-2025 Renewable Energy Compliance Plan filed by Public Service on December 20, 2022, is approved as modified by the Settlement Agreement and as clarified by this Decision, consistent with the discussion above.

4. The request for waivers of Rules 3657(a) and 3661(d); variances from currently effective tariffs and Rules 3652(ff), 3664(a), and 3878(b); and a partial waiver of paragraph 21 of Decision No. C20-0700, is granted consistent with the discussion above.

5. Public Service is authorized to file compliance advice letter filings in a separate proceeding and on not less than two business days' notice, consistent with the discussion above.

6. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument or reconsideration shall begin on the first day after the effective date of this Decision.

7. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETINGS October 5, 2022, October 19, 2022, and October 26, 2022.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners

ATTEST: A TRUE COPY

Doug Dean,
Director