

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0299E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER FINDING THAT THE CABIN CREEK FACILITY PROJECT WAS PRUDENT WITH UPGRADES TO BOTH GENERATING UNITS ALONG WITH AN EXPANSION OF THE FACILITY'S UPPER RESERVOIR.

**COMMISSION DECISION DENYING EXCEPTIONS TO
RECOMMENDED DECISION NO. R25-0488**

Issued Date: August 21, 2025
Adopted Date: August 13, 2025

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I. BY THE COMMISSION**A. Statement**

1. Through this Decision, the Commission denies the exceptions to Recommended Decision No. R25-0488 (“Recommended Decision” or “Decision”) filed on July 17, 2025, by the Office of the Utility Consumer Advocate (“UCA”).

B. Background**1. Procedural History**

2. Public Service Company of Colorado (“Public Service” or the “Company”) brought its Cabin Creek pumped storage hydroelectric plant (“Cabin Creek”) into service in 1967. In Proceeding No. 15A-0304E, the Company filed an application for a certificate of public convenience and necessity to upgrade Cabin Creek’s two turbine units and to expand the facility’s upper reservoir (“Cabin Creek Facility Project” or “Project”). After a competitive bid process, the Company chose Alstom Renewables, now GE Renewables (“GE”), to complete the Project through a fixed-price engineering, procurement, and construction (“EPC”) contract. The Project was expected to be completed by 2020, with an \$88 million budget. However, the Cabin Creek Facility Project was not completed until 2023, and costs had risen to \$109 million.

3. In the Company’s 2022 Phase I Electric Rate Case, the Commission ordered a holistic review of the costs associated with the upgrade project.¹

4. Public Service initiated this Proceeding on July 1, 2024, by filing its Verified Application with the Commission seeking an order finding that its Cabin Creek Facility Project was prudent.

¹ Decision No. C23-0592 issued in consolidated Proceeding Nos. 22AL-0478E and 22AL-0530E (September 6, 2023).

5. The Commission deemed the Application complete by minute entry on August 7, 2024, in accordance with § 40-6-109.5, C.R.S., and referred the matter to an Administrative Law Judge (“ALJ”) for disposition.

6. Decision No. R24-0641-I, issued September 6, 2024, among other things, acknowledged the interventions of right filed by UCA and the Trial Staff of the Colorado Public Utilities Commission (“Staff”) on July 18, 2024, and August 9, 2024, respectively.

7. Decision No. R24-0709-I, issued October 3, 2024, among other things, set a procedural schedule and extended the deadline for a final Commission decision in this Proceeding through August 22, 2025, pursuant to § 40-6-109.5(4), C.R.S.

8. On April 4, 2025, Public Service, on behalf of itself and Staff (together, the “Settling Parties”) filed a Motion to Approve Non-Unanimous Comprehensive Settlement Agreement (“Motion to Approve Settlement”). Along with the Motion to Approve Settlement, Public Service filed the Highly Confidential Non-Unanimous Comprehensive Settlement Agreement (“Settlement”).

9. On April 14, 2025, UCA filed its Response to the Motion to Approve Settlement, stating its opposition to the Settlement for reasons provided in UCA’s pre-filed testimony.

10. On April 17, 2025, the ALJ convened an evidentiary hearing. During the evidentiary hearing, the Settling Parties addressed their support of the Settlement through the testimony of Staff’s witness Erin O’Neill, and Company witnesses Jason Peuquet, Darin Schottler, and Nicholas Detmer. UCA addressed its objection to the Settlement through the testimony of Chris Neil.

11. On May 9, 2025, UCA filed its Statement of Position and Public Service and Staff filed a Joint Statement of Position.

12. On June 27, 2025, the ALJ issued the Recommended Decision, approving the Settlement without modification.

13. On July 17, 2025, UCA filed exceptions to the Recommended Decision No. R25-0488 (“UCA Exceptions”).

14. On July 31, 2025, Public Service and Staff filed a Joint Response to UCA’s exceptions (“Joint Response”) on July 31, 2025.

15. On August 7, 2025, UCA filed a Combined Motion for Leave to Respond and Response to the Joint Response (“Motion for Leave to Respond”).

16. On August 12, 2025, Public Service and Staff filed a Joint Response to UCA’s Motion for Leave to Respond.

2. Recommended Decision

17. In evaluating whether to approve the Settlement, the ALJ applied the legal standard set forth in Rule 1408(a) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”), 723-1, which requires that settlement agreements be shown to be “in the public interest.” The ALJ further stated that the Commission does not require that a settlement represent the best possible outcome or that it resolves every issue in favor of one party or another. Rather, the Commission considers whether the settlement falls within the range of reasonable outcomes supported by the record and whether it is in the public interest.²

18. Ultimately, the ALJ found that the evidentiary record in this Proceeding reflects that the Settlement resolves all disputed issues between Public Service and Staff and incorporates several significant financial and reporting concessions: an \$8 million reduction in equity return related to the Cabin Creek Facility Project, the return of up to \$5 million in potential Department

² Recommended Decision at ¶¶ 55-57.

of Energy grant funding, a customer credit reflecting a true-up of liquidated damages recovered under the GE contract, and new reporting obligations regarding unplanned outages and project performance metrics.

19. While acknowledging UCA's concerns, the ALJ found the evidentiary record did not compel the adoption of the specific disallowance amounts proposed by UCA.³ Rather, the ALJ held that the Settlement reflects a reasonable compromise that resolved the disputed issues considering the full evidentiary record. Addressing the \$8 million equity return reduction specifically, the ALJ found this amount to be reasonably in the range of plausible outcomes and, though not a precise calculation of harm, to appropriately balance competing positions and reasonably addresses the financial impact of the outage on customers.⁴

20. The ALJ further found that while UCA witness Neil's testimony identified concerns regarding planning, oversight, and cost impacts of the Cabin Creek Facility Project, the testimony relied on modeling assumptions and retrospective judgements that are either contested or not fully substantiated in the record.⁵ Conversely, the ALJ found the testimony offered by the Settling Parties, including Staff's witness Erin O'Neill, and Company witness Justin Peuquet, to be comprehensive and internally consistent for the \$8 million equity return reduction. The ALJ found the Settling Parties' position to be a reasonable compromise, grounded in the record and consistent with the Commission's preference for approving settlements that fall within a range of outcomes supported by the record, even if it did not resolve every claim raised by UCA.⁶

³ *Id.* at ¶ 61.

⁴ The ALJ cites to *e.g.*, Hr. Ex. 200, Answer Testimony of Chris Neil, Rev. 1 at pp. 26–27 and Hr. Ex. 300, Answer Testimony of Erin O'Neill, at pp. 30-38.

⁵ Recommended Decision at ¶ 63.

⁶ *Id.* at ¶ 65.

21. The ALJ also found the Settlement enhances transparency and accountability through mandatory reporting on project performance, unplanned outages, and generation fleet metrics, and that the limitation of a prudence determination to costs incurred through April 30, 2024, reasonably corresponds with the close of the Project's major construction phase and represents a logical endpoint for the scope of regulatory review.⁷

22. Accordingly, the ALJ concluded that, considering the entirety of the evidentiary record, the Settlement is in the public interest and should be approved without modification as it reflects a balanced and reasonable resolution of the issues supported by substantial evidence in the record.

C. UCA's Exceptions to the Recommended Decision

23. In its Exceptions, UCA presents three primary arguments: (1) the ALJ failed to meaningfully consider substantial evidence of the Company's imprudence that was introduced at the evidentiary hearing; (2) the Recommended Decision's finding that an \$8 million equity return reduction is reasonably within the range of plausible outcomes is inconsistent with the evidence; and (3) the Settlement is not just and reasonable in light of evidence of imprudence and the Recommended Decision is not in the public interest.

24. In support of its argument that the Project was improperly planned and executed, and thus the Company acted imprudently, UCA cites the Company's decision to accept GE's 11-blade turbine runner design, which required additional time for manufacture, and points to an event in which a washer was accidentally dropped into the Unit A turbine shaft seal. As further evidence of poor project planning, UCA cites to Staff's testimony regarding the 271 change orders that were required for the Project.

⁷ *Id.* at ¶¶ 67-68.

25. UCA further faults Public Service for not managing the EPC contract to minimize ratepayer costs. UCA argues that costs that can be reasonably attributed to the Company's failure to pursue contractual remedies should be disallowed as imprudent. UCA's Exceptions include a discussion of specific confidential provisions regarding schedule guarantees and liquidated damages UCA contends the Company failed to enforce. Additionally, UCA points out that Company witness Schottler's explanation of why the Company could not simply terminate the EPC contract reveals how the Company was at the whim of GE throughout the Project. For these reasons, UCA urges the Commission to find the Company's management of the EPC contract imprudent. UCA discounts the Company's claim that the fixed-price contract, requiring GE to absorb the cost of rework, was in the best interest of ratepayers.

26. UCA argues that the Company's failure to include a plan to upgrade an Isolated Phase Bus Duct ("IPBD") prior to beginning construction constitutes, despite a 2017 engineering report that included the IPBD, constitutes imprudent action, with the ultimate replacement of the IPBD leading to a \$6.4 million increase in project costs.

27. Next, UCA contends the Recommended Decision's analysis in support of the \$8 million reduction in return on equity misses critical pieces of the factual evidence received in the record. UCA argues that the cited testimony in support of the reduction does not account for the full financial impact on ratepayers and mistakenly conflates portions of the overall cost estimates in the record in an attempt to justify the \$8 million reduction.

28. UCA asserts that the Settlement is not just and reasonable considering the evidentiary record in this Proceeding. Although UCA does not oppose the Settlement's requirement of a refund of any Department of Energy grant funds to ratepayers or the requirement that liquidated damages be credited to ratepayers, UCA states that these provisions are not

compromises by the Company but should be expected from the Company. Likewise, UCA discounts the Settlement's reporting requirements because these could be easily ordered by the Commission at any time.

29. UCA criticizes the generation fleet performance metric as already being part of the settlement in the Energy Commodity Adjustment ("ECA") / Purchased Capacity Cost Adjustment proceeding and opines that the Company will be given discretion to propose a performance metric that furthers its own interests at the cost of ratepayers and the public interest.⁸

D. Joint Response to Exceptions

30. In their Joint Response to Exceptions, Public Service and Staff maintain that the Settlement is in the public interest. They note that through extensive negotiations and significant documentation filed in this Proceeding, including hundreds of pages of Direct and Rebuttal Testimony provided by the Company, hundreds of pages of Answer Testimony filed by Staff, and some 10,000 pages of response to discovery propounded by Staff, they came to a compromise that is reasonable, considers the full record in this Proceeding and addresses Staff's concerns.

31. Public Service and Staff note that although UCA opposed the Settlement, UCA's witness Neil provided only four pages of analysis on the prudence of the Company's actions, promulgated only one set of discovery questions on the Company's Direct testimony, and had no discovery questions on the Company's Rebuttal testimony. The Settling Parties argue that UCA failed to provide any connection to its requested disallowance to the actual Company actions that UCA asserts were imprudent.

32. Public Service and Staff point out that Rule 1408(a) encourages settlements and assert the Settlement reached in this Proceeding was appropriate because it resulted in the

⁸ UCA Exceptions at pp. 26-27.

resolution of divergent positions and avoided full litigation between these parties. They point to the \$8 million reduction in equity return as a compromise between Staff's initial recommendation of a \$21 million disallowance and the Company's position that there should be no disallowance. The Settling Parties contend the \$8 million represents an amount that considers the length of the Cabin Creek Facility Project and the substantial testimony and exhibits provided by Public Service in its Rebuttal testimony.

33. Public Service and Staff explain that the \$8 million reduction in equity return is based in the record in this Proceeding: Staff's initial calculation of \$21 million in disallowance included a lost capacity value based on the surplus capacity credit, which Company witness Landrum explained in Rebuttal testimony is forward looking and does not relate to what customers actually paid for capacity during the outage. Removing this amount adjusts Staff's calculation to \$9.2 million. Adding in \$100,000 for the cost of transmission reservations passed through the ECA, which Staff had not initially included, brings the total disallowance based on Staff's calculation to \$9.3 million. The Settling Parties also point out that UCA did not provide any testimony on this issue and did not question witness Landrum at the evidentiary hearing.

34. Public Service and Staff further respond that the lack of consistency and credibility of UCA witness Neil's Answer Testimony was fully discussed in the Company's Rebuttal Testimony and in their Joint Statement of Position, and note that, in its Exceptions, UCA abandons witness Neil's testimony and focuses on evidence introduced at the evidentiary hearing.

35. More specifically, the Settling Parties assert UCA rests its argument of imprudence on the Company's EPC contract with GE and a 2017 report from one of the Company's electrical contractors, which UCA claims "came to light at the evidentiary hearing."⁹ While UCA contends

⁹ UCA Exceptions at p. 25.

these documents could indicate imprudence and that the Company failed to explain what actions it took in response to the information it had, Public Service and Staff point out that these issues were not raised by witness Neil in his Answer Testimony, although the Company discussed both in Direct Testimony.

36. Regarding the Company's handling of the GE Contract, Public Service and Staff note that through Rebuttal testimony the Company addressed each issue raised by Staff and UCA, but that in its Exceptions UCA ignores thousands of pages of documentation of the Company's work with GE and fails to point out specific actions that were imprudent. They also note that witness Neil plainly admitted during cross-examination that he had not reviewed the GE Contract.¹⁰

37. Public Service and Staff also reject UCA's argument that the Company did not enforce the EPC contract, noting that GE was required to complete the work at a fixed price, absorbing substantial costs when the work was more challenging than anticipated, and GE paid liquidated damages when deadlines were not met. Liquidated damages associated with performance guarantees were not required because GE met or exceeded contractual requirements.

38. As to UCA's argument that the Company should have determined GE was in default and terminated the contract, then found another contractor to complete the Project, Public Service and Staff note that the suggestion "defies all commercial and engineering logic."¹¹ During the evidentiary hearing, Company witness Schottler testified that UCA's recommendation would have created chaos, led to higher costs and longer outages, and the Project might have been abandoned. Furthermore, Public Service and Staff state that UCA witness Neil provided no

¹⁰ The Settling Parties point to Hr. Tr. at pp. 177:22-178:4.

¹¹ Joint Response to Exceptions at p. 22.

testimony as to how terminating the contract would have saved ratepayers money or brought the Cabin Creek units back online more quickly.

39. Overall, Public Service and Staff assert that UCA fails to explain what specific actions the Company took or did not take that were imprudent, the date of these actions or inactions, the specific delays and resulting customer impacts, and specific dollar amounts associated with these actions or inactions. The Settling Parties contend UCA's failure to tie any Company actions to dollar amounts is contrary to the fundamental legal principle of causation and basic notions of fair methods for calculating disallowances or damages.

E. UCA's Motion for Leave to Respond and Response, and Joint Response

40. On August 7, 2025, UCA filed a Motion for Leave to Respond. In its Motion for Leave to Respond, UCA points to statements in the Joint Response that argue there are due process concerns in granting the exceptions because UCA failed to raise its prudency arguments in answer testimony, but rather raised it in cross-examination during hearing, and thus the Company did not have proper opportunity to respond. UCA contends this amounts to a misstatement of the law under Rules 1308(b) and 1400(e), 4 CCR 723-1. UCA also argues Public Service's assertion that it was denied a fair opportunity to address these issues in Rebuttal amounts to a material misrepresentation of the facts.

41. On August 12, 2025, Public Service and Staff filed a Joint Response to UCA's Motion for Leave to Respond. Public Service and Staff state that while they do not think UCA's motion meets the standard for filing a response under Commission rule, they suggest the Commission could grant the Motion in these circumstances for the purpose of completeness of the record and to avoid any doubt that UCA's arguments have been fully heard in this Proceeding. They also address the substance of UCA's Motion for Leave to Respond, contending that their

Joint Response to Exceptions did not make the sweeping claims suggested by UCA, but rather simply discussed how the specific cross-examination documents UCA relies on fit into the context of the entirety of the record and the specific circumstances of how UCA's Exceptions rely on those documents. Public Service and Staff assert that none of the statements or discussions in the Joint Response to UCA's Exceptions rise to the level of an incorrect statement of law or a material misrepresentation of a fact.

42. We grant UCA's Motion for Leave to Respond. While we see merit to the Company and Staff's arguments challenging whether UCA's allegations meet the standard for leave to respond under Commission rules, given that they go on to recommend granting the motion for the purpose of completeness of the record, rendering it unopposed, we find it reasonable to grant UCA's Motion for Leave to Respond in these circumstances.¹²

F. Findings and Conclusions

43. We deny UCA's Exceptions and uphold the Recommended Decision. While we agree with UCA's advocacy that the Company's planning and execution of the Cabin Creek Facility Project was imperfect, UCA has not provided adequate evidence in this Proceeding to support this Commission making additional disallowances or cost reductions, and UCA has failed in its Exceptions to present arguments that compel us to disturb the Settlement that was reached among the other parties in this Proceeding.

44. We agree with the Settling Parties that UCA's allegations of imprudence derive from an improperly narrow view of the record. Overall, we find the evidence supports Public Service's contention that, when faced with issues and delays throughout the Project, the Company

¹² We note that we do not rely on the Joint Response's claims of potential due process concerns in making our decision to deny UCA's Exceptions.

responded appropriately.¹³ Conversely, while UCA makes sweeping and general allegations of imprudence in its Exceptions, these allegations fail to respond to the contravening testimony on the record including, for example, the Company’s rebuttal testimony addressing its handling of GE and the EPC contract. Without properly grounding its assertions in the record, UCA leaves this Commission with little option but to deny its claims. The parties point this deficiency out in the Joint Response—responding that UCA does not explain specific imprudent actions the Company did or did not take, the date on which any actions or inactions occurred, the specific impact of the alleged imprudent actions on customers, or what alternative amount of disallowance should be attributed to those actions¹⁴—and we agree.

45. For example, UCA claims that Public Service “watched for years as Project delays extended beyond the original timeline,” and that the Company decided not to enforce the EPC contract.¹⁵ While Public Service addressed these issues at length in its testimony,¹⁶ UCA waived its opportunity at hearing to cross-examine the Company’s witness about that very testimony and then, even on Exceptions, fails to properly address, let alone rebut, that testimony.¹⁷ Given these deficiencies, UCA’s advocacy in this case has fallen short of demonstrating that the Company’s action, or lack of action, was unreasonable in light of the information known at the time.

46. Moreover, the parties in this Proceeding have reached a settlement agreement, which changes the lens through which we make our final decision in this case. The Commission has a longstanding policy of encouraging settlements. While the Commission maintains authority to disapprove or recommend a modification as a condition for approval, we find no compelling

¹³ *E.g.*, Hr. Ex. 106, Schottler Rebuttal, at pp. 12-103.

¹⁴ Joint Response at p. 23.

¹⁵ UCA Exceptions at pp. 16-17.

¹⁶ Hr. Ex. 106, Schottler Rebuttal, at pp. 32-36, 90; Hr. Ex. 105, Peuquet Rebuttal, at pp. 25-32.

¹⁷ Joint Response at p. 21.

reason to do so here. While UCA now contends the Settlement is neither just and reasonable nor in the public interest, it does not make a compelling argument that the record in this Proceeding warrants a modification or denial. UCA similarly does not provide convincing evidence in the record to support its previously proposed disallowances and notably does not refer to those specific values in its Exceptions. Throughout the Proceeding, and again on exceptions, UCA has failed to adequately demonstrate why the Settlement is not in the public interest or how the evidentiary record compels the larger disallowances recommended by UCA.

47. Conversely, in approving the Settlement, the Recommended Decision provided a reasoned and record-supported explanation for why the specific terms of the Settlement, and the Settlement as a whole, is in the public interest.¹⁸ We agree with the Recommended Decision that the Settlement falls within the range of reasonable outcomes based on the record in this Proceeding. In particular, the ALJ found that, based on the record, the \$8 million equity return reduction is reasonably within the range of plausible outcomes, and reflects a material financial benefit to ratepayers.¹⁹ Contrary to UCA's claims, the ALJ points to testimony in this Proceeding that support this finding, and noted that although it does not match the larger disallowances proposed by UCA, it represents a reasonable, litigation-based compromise.²⁰

48. We also note that while we would like to have seen a project-specific performance incentive mechanism ("PIM") in this Proceeding, we acknowledge that such a PIM will be addressed in the fleet-wide review of PIMs a Company filing within the next year.

49. Moreover, after a review of the record, we acknowledge the thorough work done by Staff in this case, including propounding significant discovery and writing extensive testimony.

¹⁸ Recommended Decision at ¶¶ 54-69.

¹⁹ *Id.* at ¶¶ 61, 65.

²⁰ *Id.* at ¶ 65.

The Cabin Creek Upgrade Project has been addressed in multiple proceedings and Staff has demonstrated diligence in seeing it through to its conclusion with this prudence review.

II. ORDER

A. The Commission Orders That:

1. The Exceptions to Recommended Decision No. R25-0488 filed by the Colorado Office of the Utility Advocate (“UCA”) on July 17, 2025, are denied, consistent with the discussion above.
2. The Motion for Leave to Reply filed on August 7, 2025, by UCA is granted, consistent with the discussion above.
3. The 20-day time period provided by § 40-6-14, C.R.S., to file an Application for Rehearing, Reargument, or Reconsideration shall begin on the first after the effective date of this Decision.

4. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 13, 2025.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners