

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

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**RE: IN THE MATTER OF THE )  
APPLICATION OF PUBLIC SERVICE )  
COMPANY OF COLORADO FOR THE ) PROCEEDING NO. 15A-0847E  
APPROVAL OF TWO INNOVATIVE )  
CLEAN TECHNOLOGY PROJECTS )**

**SETTLEMENT AGREEMENT**

**Introduction**

Public Service Company of Colorado (“Public Service” or the “Company”), the Staff of the Colorado Public Utilities Commission (“Staff”), the Colorado Office of Consumer Counsel (“OCC”), the Colorado Energy Office (“CEO”), Sunrun, Inc. (“Sunrun”), Western Resource Advocates (“WRA”), and the Energy Freedom Coalition of America (“EFCA”), (the Staff, the OCC, the CEO, Sunrun, the WRA, and the EFCA are collectively referred to as the “Intervenors,” and together with Public Service, all parties to this agreement collectively are referred to as the “Settling Parties”), hereby enter into this Settlement Agreement to resolve all issues that have been raised in this proceeding.

**Background**

On October 29, 2015, Public Service filed a Verified Application commencing Proceeding No. 15A-0847E in which it requested that the Commission approve its third and

fourth Innovative Clean Technology (“ICT”) projects – the Panasonic Project and the Stapleton Project (together known as “ICT Projects”) and for an order authorizing deferred accounting of all of the Company’s project costs (the “Verified Application”). Accompanying the Verified Application were the testimonies of two witnesses: Alice K. Jackson and Chad S. Nickell. The Verified Application was based on the following facts.

In 2009, Public Service initiated Docket No. 09A-015E in which it sought approval of an ICT program and its first ICT project. Following full consideration of the Application, the Commission issued Decision Nos. C09-0472 and C09-0889 approving, respectively, the Company’s first ICT project and the procedures to be followed by the Company to obtain approval of additional ICT projects.

The Company filed the Verified Application to obtain approval of the Panasonic and Stapleton ICT projects in accordance with Decision No. C09-0889. The ICT Projects are expected to expand the Company’s understanding of energy storage. The Panasonic project will analyze the benefits of battery storage technology and an associated microgrid at a location where there is a large commercial installation of distributed solar generation. In the Stapleton project, batteries will be deployed on distribution feeders where the Company is experiencing high penetrations of distributed solar generation.

On January 11, 2016, the Staff and EFCA filed testimony concerning the Verified Application. The Staff requested that the Commission:

1. Approve the proposed ICT Projects with the condition that Public Service file semi-annual reports.

2. Grant a rebuttable presumption of prudence for up to \$10.7 million in capitalized costs and enter an accounting order authorizing deferred accounting of these capitalized expenditures.

3. Deny a presumption of prudence for operation and maintenance (“O&M”) costs, but enter an order authorizing separate deferred accounting of any O&M expenses associated with the ICT Projects such that the Company will be allowed to seek recovery in a future rate proceeding.

EFCA’s testimony contended that the two ICT projects were not adequately developed, disputed Public Service’s plans to own batteries on the customer’s side of the meter, proposed that RFPs be circulated for approval for both projects, and suggested flexibility with regard to IP ownership.

### **Settlement**

The Settling Parties agree that they have no objection to the Panasonic and Stapleton projects proceeding as proposed, subject to the following terms and conditions. The provisions of this Settlement Agreement are not intended to modify the ICT process as approved by the Commission in Decision C09-0889. These provisions are intended to be applicable only to the projects addressed in the Settlement Agreement.

#### ***A. Preparation Timelines and Reporting***

1. Public Service will meet the following milestone preparation and reporting filing timelines for each project:

a. The Stapleton Project:

(i) Requests for Proposal for batteries (“RFP”) (issue ninety (90) days after the latter of the receipt of Request for Information (“RFI”) responses or

the Commission's approval of the application; consider stakeholder input in 90-day issuance period as described below; file no later than thirty (30) days after preparation)

(ii) The RFP Award Recipient (issue award approximately sixty (60) days from receipt of bids; file report within fifteen (15) days of selection)

(iii) Test Protocols (develop approximately thirty (30) days after award of contract; file within fifteen (15) days of completion)

b. The Panasonic Project:

(i) Test Protocols (develop approximately sixty (60) days after Commission approval of application; file within fifteen (15) days of completion)

2. Testing shall not commence prior to Public Service filing of Test Protocols with the Commission.

3. If Public Service needs more time and is unable to prepare any of the above documents within the periods set out above, the Company will notify parties and stakeholders to explain the reason for the delay.

4. Upon a project entering testing status, Public Service will file semi-annual reports with the Commission. In the event that the projects do not enter testing status simultaneously, the semi-annual filing date will be the first day of the sixth month following the date the first project becomes operational (e.g., if Panasonic enters testing status in October 2016, then the first report will be due May 1, 2017). After testing for both projects has begun, Public Service will continue to file one report containing information for each project through the project's completion. In its reports, Public Service will summarize the activities since the last report, summarize the results for any testing of attributes that concluded since the last report, and list the

amounts incurred in the capital and deferred O&M accounts for each project. In addition, Public Service will briefly summarize the testing planned for the next six-month period and provide a revised test plan if the test plan has been revised since the previous report.

5. Within thirty (30) days following the filing of each semi-annual report, Public Service will convene a meeting of stakeholders (which, on a going forward basis for the Panasonic and Stapleton projects, includes the addition of parties to this case who are not already Stakeholders). At the stakeholder meeting, the Company will discuss test results and future test plans, and give those stakeholders attending the meeting the opportunity to comment and ask questions.

***B. Accounting and Financial Matters***

1. The parties recommend that the Commission establish a rebuttable presumption of prudence for each project individually and enter an accounting order for each project authorizing deferred accounting of these capitalized expenditures. Public Service has recalculated the estimates for each project included in its application to remove costs for operations and maintenance expenses including any labor costs incurred following the project reaching testing status, and the remaining capitalized cost figures will be the amount of the rebuttable presumption for each project.<sup>1</sup>

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<sup>1</sup> The cost estimates for each project are as follows:

**Panasonic Battery Demonstration Cost Estimate**

Total Estimated Cost: \$6,720,000  
Ongoing O&M Estimates: \$1,000,000  
Capitalized Costs: \$5,720,000

**Stapleton Battery Demonstration Cost Estimate**

Total Estimated Cost: \$4,012,000  
Ongoing O&M Estimates: \$600,000  
Capitalized Costs: \$3,412,000

2. The parties recommend that any ongoing O&M expenses associated with the Stapleton and Panasonic projects incurred after the project reaches testing status be recorded in a separate deferred accounting mechanism for each project such that Public Service will be allowed to seek recovery in a future rate proceeding.

3. The parties agree that the presumption of prudence granted by the Commission to prior innovative clean technology projects (*e.g.*, Decision No. C09-0472) applies to each of the Panasonic and Stapleton projects. The Settling Parties agree that a rebuttable presumption of prudence applies to the projected capitalized costs for the Stapleton and Panasonic projects. The Company recognizes its obligation to present direct testimony with appropriate documentation to demonstrate that it implemented and managed the projects in a prudent manner in any base rate case in which recovery of any capital, O&M, and/or labor costs of either project is sought. The Settling Parties also agree that the Intervenors reserve all rights to challenge the Company's recovery of any capital, O&M and/or labor costs of either project in any base rate case in which recovery is sought.

***C. Other Matters Related to the Stapleton Project***

1. Public Service will own the batteries on the customer side of the meter for the purpose of the Stapleton Project, but Public Service expressly acknowledges that the purpose of this demonstration and proceeding is not to determine precedent for the future regarding the ownership of batteries on the customer side of the meter.

2. The Settling Parties agree that a goal of this demonstration project will be to develop best practices for efficiently interconnecting and integrating customer-sited batteries, irrespective of the ownership of those batteries. To that end, Public Service will work with the

selected third party partner to ensure that the communication approach tested in this pilot will be appropriate for interfacing with utility, customer, and third party owned customer-sited batteries.

3. The Company has issued an RFI to potential bidders, which was provided to Sunrun and EFCA as well as others, to solicit input regarding how to structure its RFP. Based on the responses to the RFI, Public Service will develop an RFP within 90 days of receiving responses to its RFI, as noted above. Public Service will provide a draft of the RFP to a stakeholder group for comment. Public Service will invite each party in the case and other potential vendors it expects to include in the mailing list of the RFP to participate in the stakeholder group. Public Service will take the comments of the stakeholders into consideration when developing the final RFP. As part of its RFP filing, Public Service will include a summary of the comments provided by stakeholders at or before the stakeholder meeting (written or oral) regarding the draft RFP, and whether and how Public Service addressed the concern raised.

4. Parties responding to the RFP may set out their intellectual property (“IP”) needs and/or proposals, and Public Service will consider these proposals in evaluating responses to the RFP. It is not the Company’s intent to require any particular IP arrangement.

***D. Additional Testing***

1. Within six (6) months of the time that UL1741 SA standard is approved by UL and advanced inverters are commercially available, Public Service agrees to propose to test advanced inverters in one of two ways. First, it may opt to incorporate advanced inverter functionality in the Stapleton project. In addition to enabling functionality on the inverters the Company already owns, this option will likely require the addition of additional advanced inverters. In deciding which inverters to use, the Company (in consultation with the project stakeholder group) will consider whether there are existing customer and third party installations

that may be used or whether there are third parties that are willing to contribute the inverters to be tested (and if so on what terms). The Company will seek the Commission's authority to modify the Stapleton Project if this test increases the costs of the project materially. It is understood that this approach may require the City of Denver to grant exceptions to the National Electrical Code (“NEC”) so that Public Service may test the inverters. Alternatively, the Company may present another ICT project to ICT stakeholders, (which, for this potential future project, will include third party providers of distributed energy resources) to test certain advanced inverter capabilities through an RFP unless a potential partner has made a proposal to the Company to test this functionality. If the Company chooses to present another ICT project to test advanced inverter functionality rather than incorporating into the Stapleton Project, the Company will solicit feedback from stakeholders (including third party providers of distributed energy resources) on its proposed project and will take such feedback into consideration when preparing its ICT application. The Company agrees to file the application with the Commission for approval of the advanced inverter project within three months of presenting the project to stakeholders, provided that there is general consensus that this is a worthy project to pursue.

### **General Provisions**

1. The Settling Parties understand and agree that this Settlement Agreement represents a negotiated resolution of all issues that the Settling Parties either raised or could have raised in this proceeding. The Settling Parties understand that the Commission’s approval of this Settlement Agreement shall constitute a determination that the Settlement Agreement represents a just, equitable, and reasonable resolution of these issues. Accordingly, the Settling Parties state that reaching resolution of these issues in this proceeding through this negotiated Settlement



Agreement is in the public interest and that the results of the compromises and agreements reflected in the Settlement Agreement are just, reasonable, and in the public interest.

2. The Settling Parties agree to join in a motion that requests that the Commission approve this Settlement Agreement, and to support the Settlement Agreement in any subsequent pleadings or filings. Each Settling Party further agrees that in the event that it sponsors a witness to address the Settlement Agreement at any hearing that the Commission may hold to address it, the Settling Party's witness will testify in support of the Settlement Agreement and all of the terms and conditions of the Settlement Agreement. The Settling Parties agree to reasonably seek approval of this Settlement Agreement before the Commission against challenges that may be made by non-executing parties.

3. The Settling Parties agree that all their pre-filed testimony and exhibits shall be admitted into evidence in this proceeding without cross examination by the Settling Parties.

4. Except as expressly stated herein, nothing in this Settlement Agreement shall resolve any principle or establish any precedent or settled practice.

5. Nothing in this Settlement Agreement shall constitute an admission by any Settling Party of the correctness or general applicability of any principle, or any claim, defense, rule, or interpretation of law, allegation of fact, regulatory policy, or other principle underlying or thought to underlie this Settlement Agreement or any of its provisions in this or any other proceeding. As a consequence, no Settling Party in any future negotiations or proceedings whatsoever (other than any proceeding involving the honoring, enforcing, or construing of this Settlement Agreement in those proceedings specified in this Settlement Agreement, and only to the extent, so specified) shall be bound or prejudiced by any provision of this Settlement Agreement.

6. The discussions among the Settling Parties that have produced this Settlement Agreement have been conducted with the understanding, pursuant to Colorado law, that all offers of settlement, and discussions relating thereto, are and shall be privileged and shall be without prejudice to the position of any of the Settling Parties and are not to be used in any manner in connection with this or any other proceeding.

7. This Settlement Agreement shall not become effective until the issuance of a final Commission Decision approving the Settlement Agreement, which Decision does not contain any modification of the terms and conditions of this Settlement Agreement that is unacceptable to any of the Settling Parties. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party shall have the right to withdraw from this Agreement and proceed to hearing on the issues that may be appropriately raised by that Settling Party in this proceeding. The withdrawing Settling Party shall notify the Commission and the Settling Parties to this Agreement by e-mail within three business days of the Commission modification that the party is withdrawing from the Settlement Agreement and that the party desires to proceed to hearing; the e-mail notice shall designate the precise issue or issues on which the party desires to proceed to hearing (the "Hearing Notice").

8. The withdrawal of a Settling Party shall not automatically terminate this Agreement as to any other party. However, within three business days of the date of the Hearing Notice from the first withdrawing party, all Settling Parties shall confer to arrive at a comprehensive list of issues that shall proceed to hearing and a list of issues that remain settled as a result of the first party's withdrawal from this Settlement Agreement. Within five business days of the date of the Hearing Notice, the Settling Parties shall file with the Commission a formal notice containing the list of issues that shall proceed to hearing and those issues that

remain settled together with a proposed procedural schedule. The Settling Parties who proceed to hearing shall have and be entitled to exercise all rights with respect to the issues that are heard that they would have had in the absence of this Settlement Agreement.


9. All Parties have had the opportunity to participate in the drafting of this Settlement Agreement and the term sheet upon which it was based. There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

10. This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Settlement Agreement with respect to the issues addressed by this Agreement.


Dated this 29<sup>th</sup> day of January, 2016.

Agreed on behalf of:

PUBLIC SERVICE COMPANY  
OF COLORADO

By:   
Alice K. Jackson  
Regional Vice President, Rates and  
Regulatory Affairs

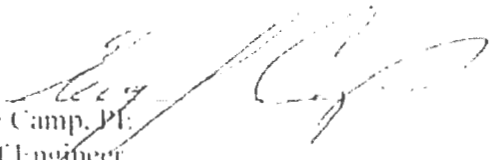
Approved as to Form:

By:   
William M. Dudley  
Lead Assistant General Counsel


Dated this 29<sup>th</sup> day of January, 2016.

Agreed on behalf of:

TRIAL STAFF OF THE COLORADO  
PUBLIC UTILITIES COMMISSION

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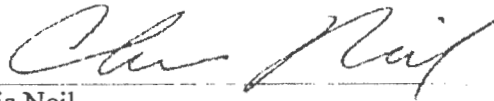
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Dated this 29<sup>th</sup> day of January, 2016.

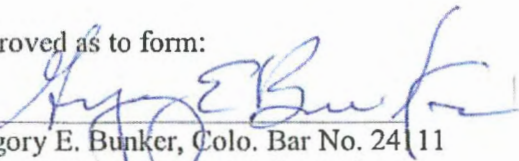
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Dated this 29th day of January, 2016.

Agreed on behalf of:

THE COLORADO ENERGY OFFICE

By: /s/ Ellen Howard Kutzer  
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Ellen.kutzer@coag.gov

Dated this 29th day of January, 2016.

Agreed on behalf of:

WESTERN RESOURCE ADVOCATES

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Dated this 29<sup>th</sup> day of January, 2016.

Agreed on behalf of:

ENERGY FREEDOM COALITION OF  
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