

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0046E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF A SHORT-TERM POWER PURCHASE AGREEMENT, AND AMENDMENTS TO OTHER SUCH AGREEMENTS, EXTENDING EXISTING GENERATION RESOURCES INCLUDING RIDGE CREST WIND, ARAPAHOE, BRUSH 2, AND BRUSH 4.

**COMMISSION DECISION GRANTING APPLICATION AS
MODIFIED BY THE UNOPPOSED COMPREHENSIVE
SETTLEMENT AGREEMENT AND GRANTING THE
MOTION FOR LIMITED WAIVERS AND VARIANCES OF
COMMISSION RULE 3615 AND COMMISSION DECISION
NO. C06-1379**

Mailed Date: August 22, 2023
Adopted Date: August 16, 2023

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

1. This Decision grants the Unopposed Joint Motion to Approve the Unopposed Comprehensive Settlement Agreement (Unopposed Joint Motion) that Public Service Company of Colorado (Public Service or the Company) filed on June 9, 2023. This Decision thereby grants the Application for Approval of a Short-Term Power Purchase Agreement and Amendments to Other Such Agreements (Application) as modified by the Unopposed Comprehensive Settlement Agreement (Settlement Agreement).

2. In addition, through this Decision, in accordance with the approved Settlement Agreement, we grant the Motion for Limited Waivers and Variances of Commission Rule 3615 and Commission Decision No. C06-1379 (Motion for Waivers and Variances) that Public Service filed with the Application on January 26, 2023.

B. Procedural History

3. In the Application, Public Service requests Commission approval of a portfolio of amendments and extensions for four power purchase agreements (PPAs). These PPAs involve the Brush 2, Brush 4, Arapahoe, and Ridge Crest generation facilities, which collectively contribute 322 megawatts (MW) of accredited capacity over the years 2023-2025.¹

4. In the Motion for Waivers and Variances, Public Service seeks a waiver of the applicable provisions of Rule 3615 of the Commission's Rules, 4 *Code of Colorado Regulations* 723-3-3600, *et seq.*, related to acquiring resources outside of an approved resource plan. The

¹ Application, pp. 1-2.

Company also seeks a waiver from the standard PPA prudence review process associated with its Purchased Capacity Cost Adjustment (PCCA) rate rider as established in Decision No. C06-1379.

5. By Decision No. C23-0174-I, issued March 10, 2023, the Commission acknowledged the interventions of right that Trial Staff of the Colorado Public Utilities Commission (Staff), the Colorado Office of the Utility Consumer Advocate (UCA), the Colorado Energy Office (CEO) each filed. The Commission also granted the motions for permissive intervention that the Colorado Independent Energy Association (CIEA), Onward Energy Management LLC (Onward Energy), and the Sierra Club each filed. Lastly, in Decision No. C23-0174-I, the Commission directed Public Service to file Supplemental Direct Testimony addressing the following issues:

- 1) the Company's analysis of demand reductions resulting from the implementation of time-of-use (TOU) rates;
- 2) the demand response (DR) solutions that the Company considered, including the evaluation of new and more robust DR solutions, as they relate to the supply-side solutions the Application presents;
- 3) the interaction of the potential approval of the short-term PPA extensions at issues in this Proceeding and the Company's resource solicitation in the 2021 Electric Resource Plan and Clean Energy Plan (2021 ERP/CEP) (Proceeding No. 21A-0141E); and
- 4) the geographic relationship of the four generation facilities subject to the Application with any disproportionately impacted (DI) communities.²

6. In addition, in Decision No. C23-0174-I the Commission concluded that it would be necessary to address the merits of the Motion for Waivers and Variances after the hearing in this matter.

² Decision No. C23-0174-I, pp. 10-11.

7. By Decision No. C23-0201-I, issued March 24, 2023, the Commission approved the parties' proposed procedural schedule, including a two-day, *en banc* evidentiary hearing on August 3 and August 4, 2023.

8. On June 1, 2023, Public Service filed an Unopposed Notice and Motion, notifying the Commission that the parties had reached a settlement in principle. The Unopposed Notice and Motion requested that the Commission vacate all pre-hearing deadlines, including the June 2, 2023, deadline for Answer Testimony, and establish a deadline of June 9, 2023, by which to file a settlement agreement.

9. By Decision No. C23-0382-I, issued June 8, 2023, the Commission granted, in part, the Unopposed Notice and Motion. The Commission vacated the June 2, 2023, deadline for Answer Testimony and several other prehearing dates, established a deadline of June 9, 2023, to file the settlement agreement, and established a deadline of June 23, 2023, to file settlement testimony. As a result of the Settlement Agreement and Decision No. C23-0382-I, none of the parties filed Answer Testimony in this Proceeding.

10. On June 9, 2023, Public Service filed the Unopposed Joint Motion along with the Settlement Agreement. In the Unopposed Joint Motion, Public Service notes that Staff, UCA, CEO, CIEA, and Onward Energy, (each a Settling Party and collectively, the Settling Parties) jointly request that the Commission approve the Settlement Agreement. Public Service further notes that although Sierra Club did not sign the Settlement Agreement, it does not oppose the Settlement Agreement.³ A copy of the Settlement Agreement is attached to this Decision as Attachment A.

³ Unopposed Joint Motion, p. 1.

11. On June 23, 2023, Public Service and CEO each filed testimony in support of the Commission's approval off the Settlement Agreement.

12. By Decision No. C23-0473-I, issued July 21, 2023, the Commission vacated the evidentiary hearing scheduled for August 3 and August 4, 2023, along with the remainder of the procedural schedule.

C. Settlement Agreement and Supporting Testimony

13. In general, the Settlement Agreement is comprised of five components: (1) the approval of the PPAs, (2) the requested waivers and variances, (3) additional DR reporting requirements, (4) TOU rates, and (5) engagement and outreach targeting certain DI communities. We address each of these components and the relevant portions of the supporting testimony in turn.

1. Approval of the PPAs

14. In the Settlement Agreement, the Settling Parties agree that the Commission should approve the portfolio of four short-term PPA contracts as set forth in the Company's Direct Testimony for the Ridge Crest, Arapahoe, Brush 2, and Brush 4 generation facilities. The Settling Parties also agree that the Commission should find that the contract execution and contract terms of the four short-term PPA contracts are prudent, reasonable, and in the public interest and that that the need for the PPA extensions should not be attributed to mismanagement.⁴

15. In its Settlement Testimony, Public Service reiterates that resource adequacy is a major issue of focus in Colorado and across the West due to a myriad of factors and that Public Service is facing a near-term capacity shortfall. The Company argues that the amendments and extensions of the four PPAs at issue in this Proceeding are aimed at meeting immediate resource

⁴ Settlement Agreement, pp. 2, 5.

capacity needs and ensuring system reliability while Phase II of the Company's 2021 ERP/CEP continues to play out for the longer-term.⁵ Public Service goes on to argue that the four PPAs are in the public interest because they provide a viable, cost-effective solution for customers and that the terms of the PPAs are "the most favorable outcome achievable" given the competitive market.⁶ CEO likewise argues in its Settlement Testimony that the Commission should approve all four PPA resource contracts, arguing that the PPAs "represent a prudent, cost-effective solution to meet short-term resource adequacy."⁷

2. Request for Waivers and Variances

16. The Settling Parties agree that the Commission should grant limited waivers and variances from applicable provisions of Rule 3615 and Commission Decision No. C06-1379 and any other waivers or variances deemed necessary to allow for the approval of this Settlement Agreement.⁸

17. In support of these provisions, in its Settlement Testimony, Public Service argues that the four PPAs are in the public interest and that the Commission should grant a limited waiver to allow the Company to proceed outside of an approved resource plan.⁹ Likewise, Public Service argues that a limited variance from Decision No. C06-1379 is warranted so that the Commission can evaluate the prudence of the four PPAs in this Proceeding as opposed to waiting for the next electric commodity adjustment (ECA) and PCCA annual prudence review proceedings. Public Service reasons that the Commission and interested stakeholders will still have an opportunity in

⁵ Hearing Exhibit (HE) 106 (Ihle Settlement Testimony), pp. 8-9.

⁶ *Id.* at 16.

⁷ HE 600 (Durkay Settlement Testimony), p. 21.

⁸ Settlement Agreement, p. 2.

⁹ HE 106 (Ihle Settlement Testimony), pp. 18-19.

future ECA and PCCA Annual Prudence Review proceedings to evaluate the prudence of contract administration and costs consistent with the existing prudence review regulatory framework.¹⁰

3. Demand Response

18. As part of the Settlement Agreement, Public Service commits to providing quarterly reporting to the Commission, Staff, UCA, and CEO on the use and performance of its DR and load management programs and pilots. The Settlement Agreement specifies that this reporting will include the following:

- DR and load management events called, listed separately by program and date;
- a short explanation describing the reason the event was called;
- expected load reduction/shift at time event was called, listed separately by program;
- estimated load reduction/shift actually achieved, listed separately by program;
- a list of outages/restrictions in effect at the time the event was called; and
- the amount of estimated load reduced during DR events as compared to the Company's capacity assumptions for DR used in its loads and resources (L&R) table.¹¹

19. The first report is due 20 calendar days after the conclusion of the first fiscal quarter closing after a final Commission decision approving the Settlement Agreement and will continue through the term of the last short-term PPA at issue in this Proceeding, (*i.e.*, through the end of 2026).¹²

20. In its Settlement Testimony, Public Service states that the additional reporting is meant to provide greater transparency into the role of DR and load management programs in the Company's system and how such programs reduce or shift load. More specifically, the Company

¹⁰ *Id.* at 19-20.

¹¹ Settlement Agreement, p. 3.

¹² *Id.*

states that the reporting addresses concerns raised by the Settling Parties by providing greater detail around when and why DR and load management programs are actually called by the Company. Public Service asserts that the reports will provide additional insight into the role of DR and load management programs in system operations and the interaction of these programs with supply-side resources.¹³

21. For its part, CEO opines in its Settlement Testimony that these provisions will increase transparency on the Company's DR efforts. This transparency, CEO asserts, will supplement final or anticipated decisions in Proceeding Nos. 21A-0141E, 22A-0309EG, and 22A-0315EG, which all contain DR considerations.¹⁴

4. TOU Rates

22. Regarding demand reductions from TOU rates, the Settling Parties agree that in the L&R table in the Pueblo Just Transition Plan (to be filed in June 2024) Public Service will include its best estimate of demand reductions from the implementation of residential and commercial TOU rates. These estimates will include a detailed calculation of how the estimates were derived and a narrative explaining how these and other time-varying rates are accounted for in either the Company's load forecast or accredited demand response capacity in its L&R table.¹⁵

23. Public Service notes that—based on an initial analysis—the residential TOU rate has shown early signs of success as it relates to peak demand reduction. The Company argues that the Settlement Agreement's provisions on TOU rates help ensure that the Commission and interested stakeholders will have the demand reduction estimates from the most recently available

¹³ HE 106 (Ihle Settlement Testimony), pp. 21-22.

¹⁴ HE 600 (Durkay Settlement Testimony), p. 33.

¹⁵ Settlement Agreement, p. 4.

data for purposes of evaluating customer demand and resource needs in the next ERP (*i.e.*, the Pueblo Just Transition Plan).¹⁶

24. CEO likewise supports the Settlement Agreement provisions regarding TOU rates. CEO reasons that by accounting for the impacts of residential and commercial TOU rates in the Company's L&R table, potential future capacity positions and the planning reserve margin calculation will account for these considerations for the years 2024-2026 and beyond.¹⁷

5. DI Communities

25. In the Settlement Agreement, the Settling Parties agree that the Company should engage customers in DI communities located near the facilities at issue in this Proceeding that are within the Company's service territory (*i.e.*, the communities near Brush 2, Brush 4, and Arapahoe). Public Service must conduct engagement and outreach either directly or through community-based organizations. The Settlement Agreement states that the purpose of this engagement and outreach is to provide education and information about why these resources are needed and how they may be operated on an ongoing basis.¹⁸

26. During this community engagement, Public Service will provide information regarding why the gas-fired facilities are needed and how they may be operated on an ongoing basis, answer questions from community members, and encourage the owners of the facilities to coordinate with the engagement. The Settlement Agreement further requires the Company to provide on its website documentation of engagement and outreach performed, including slides, invitees, attendance, dates of engagement, etc.¹⁹

¹⁶ HE 106 (Ihle Settlement Testimony), pp. 22-24.

¹⁷ HE 600 (Durkay Settlement Testimony), p. 31.

¹⁸ Settlement Agreement, pp. 4-5.

¹⁹ *Id.*

27. In its Settlement Testimony, Public Service notes the proximity of the generation facilities relative to mapped DI communities. The Company states that the outreach and engagement efforts that the Settlement Agreement requires are in the public interest because such efforts help ensure that the communities and populations most directly impacted by resource acquisition decisions are informed and aware of the actions being taken by the Company and why.²⁰

28. CEO supports the provisions of the Settlement Agreement requiring Public Service to engage with DI communities. In its Settlement Testimony, CEO argues that one of the key tenets of HB 21-1266 is engagement with members of DI communities, and the Settlement Agreement seeks to provide opportunities for that engagement. CEO goes on to opine that the Settlement Agreement provisions regarding DI communities are consistent with the State's Greenhouse Gas Pollution Reduction Roadmap (GHG Roadmap). CEO notes the GHG Roadmap's commitment to climate equity and environmental justice: "the state must work with impacted communities to intentionally and strategically design and implement programs and policies that reduce GHG and invest in impacted communities."²¹

D. DISCUSSION

29. We commend the Settling Parties for reaching a comprehensive, unopposed Settlement Agreement. Although we provide additional commentary below regarding the Commission's expectations regarding DR and the engagement and outreach with DI communities, we find good cause to grant the Unopposed Joint Motion and thereby approve the Settlement Agreement without modification.

²⁰ HE 106 (Ihle Settlement Testimony), pp. 25, 27.

²¹ HE 600 (Durkay Settlement Testimony), pp. 25-26 (quoting GHG Roadmap, at 2 (Jan. 14, 2021)).

30. To begin, the record shows that the four PPAs at issue in the Application are a prudent, cost-effective solution to meet short-term resource adequacy needs and that their approval is in the public interest. Without the 322 MWs of accredited capacity that the PPAs provide, Public Service would likely need to fill the short-term resource shortage with market purchases.²² As the record demonstrates, however, it is not clear that Public Service could successfully acquire all of the necessary capacity via the market, and recent prices for energy market purchases are much higher than the prices for the four PPAs.²³

31. Given that the approval of the four PPAs is in the public interest, there is good cause to grant Public Service's requested waivers and variances. We approve the components of the Settlement Agreement regarding these waivers and variances and grant the Motion for Waivers and Variances.

32. Likewise, we approve the provisions of the Settlement Agreement regarding DR reporting and TOU rates. These provisions set forth prudent next steps for Public Service to take. That said, the Commission has repeatedly articulated our desire for DR and demand side resources to play a more ambitious role in the Company's operations. While we approve these Settlement Agreement provisions without modification, we expect that the Company will continue to move forward with a robust suite of DR analysis consistent with the policy directives the Commission has articulated in other proceedings.

33. Finally, we find CEO's testimony on the provisions for DI communities to be persuasive in that the Settlement Agreement seeks to provide opportunities for engagement with members of DI communities, consistent with HB 21-1266 and the State's GHG Roadmap. We

²² HE 106 (Ihle Settlement Testimony), pp. 16-17; HE 600 (Durkay Settlement Testimony), p. 21.

²³ HE 103 (Boughner Direct), pp. 17-20.

hope and expect that the engagement Public Service conducts will include listening to those communities and understanding their priorities and interests. Public Service's efforts should provide a meaningful opportunity for those communities to engage in robust, two-way communication, especially as we move forward with further rounds of resource planning.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Joint Motion to Approve the Unopposed Comprehensive Settlement Agreement filed by Public Service Company of Colorado (Public Service) on June 9, 2023, is granted, consistent with the discussion above.

2. The Application for Approval of a Short-Term Power Purchase Agreement and Amendments to Other Such Agreements filed by Public Service on January 26, 2023, and as modified by the Unopposed Comprehensive Settlement Agreement, is granted, consistent with the discussion above.

3. In accordance with the Unopposed Comprehensive Settlement Agreement, the Motion for Limited Waivers and Variances of Commission Rule 3615 and Commission Decision No. C06-1379, filed by Public Service on January 26, 2023, is granted.

4. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 16, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners