

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

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**IN THE MATTER OF THE APPLICATION )  
OF PUBLIC SERVICE COMPANY OF )  
COLORADO FOR APPROVAL OF A )  
SHORT-TERM POWER PURCHASE )  
AGREEMENT FOR BRUSH 2, AND ) PROCEEDING NO. 23A-0046E  
APPROVAL OF AMENDMENTS FOR )  
SHORT-TERM EXTENSIONS OF )  
EXISTING POWER PURCHASE )  
AGREEMENTS FOR RIDGE CREST, )  
ARAPAHOE, AND BRUSH 4 )**

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**UNOPPOSED COMPREHENSIVE SETTLEMENT AGREEMENT**

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**INTRODUCTION AND IDENTIFICATION OF PARTIES**

This Unopposed Comprehensive Settlement Agreement (“Settlement Agreement” or “Agreement”) is filed on behalf of Public Service Company of Colorado (“Public Service” or the “Company”), Trial Staff (“Staff”) of the Colorado Public Utilities Commission (“Commission”), the Colorado Office of the Utility Consumer Advocate (“UCA”), the Colorado Energy Office (“CEO”), the Colorado Independent Energy Association (“CIEA”), and Onward Energy Management LLC (“Onward Energy”), (each a “Settling Party” and collectively, the “Settling Parties”). Sierra Club, also a party to this proceeding, does not join, but also does not oppose this Settlement Agreement. This Settlement Agreement is intended to represent a comprehensive resolution of Commission Proceeding No. 23A-0046E, which addresses Public Service’s Application

for approval of a portfolio of four short-term Purchase Power Agreement (“PPA”) amendments and extensions for generation resources that are currently on (or have recently been on) the Public Service system so as to maintain 322 megawatts (“MW”) of accredited capacity, at varying levels, over the years 2023-2026.

### **SETTLEMENT AGREEMENT**

The following terms comprise the Settlement Agreement reached by the Settling Parties.

#### **I. Approval of Short-Term PPA Portfolio.**

The Settling Parties agree that the Commission should approve the portfolio of four short-term PPA contracts (provided as Highly Confidential Attachments JLB-1 through JLB-4 to the Direct Testimony of Company witness Mr. John Bornhofen) for the Ridge Crest, Arapahoe, Brush 2, and Brush 4 generation facilities to provide needed accredited capacity to assist in alleviating the Company’s near-term resource adequacy shortfall.

#### **II. Prudence of the Contract Execution and Terms.**

The Settling Parties agree that the Commission should find that the contract execution and contract terms of the four short-term PPA contracts (provided as Highly Confidential Attachments JLB-1 through JLB-4 to the Direct Testimony of Company witness Mr. John Bornhofen) are prudent, reasonable, and in the public interest.

#### **III. Grant of Waivers and Variances.**

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.

#### **IV. Demand Response Reporting.**

The Settling Parties agree that the Company will provide quarterly reporting, with appropriate confidentiality protections, to the Commission, Staff, UCA, and CEO on the use and performance of its demand response (“DR”) and load management programs and pilots. The reporting will include:

- DR and load management events called, listed separately by program and date;
- 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;
- 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.

The first report will be due 20 calendar days after the conclusion of the first fiscal quarter closing after a final Commission decision approving the Settlement Agreement. For example, if a final Commission Decision is entered in July, the first quarterly report would be due October 20, 2023 (20 calendar days after the close of third quarter). The reporting detailed above will be provided in Proceeding No. 22M-0342E, subject to the confidentiality designations and disclosure limitations described above. This reporting will continue through the term of the last short-term PPA at issue in this proceeding, i.e., through the end of 2026, and all reports will be due 20 calendar days after the close of the fiscal quarter.

**V. Residential Time-of-Use (“TOU”) and Commercial Time-Varying Rates in Loads and Resources (“L&R”) Table.**

The Settling Parties agree that the Company will include, as separate line items, its best estimate based on and supported by the most recent available data, of demand reductions resulting from the implementation of Schedules RE-TOU and C-TOU rates in the Company’s L&R table in the upcoming Pueblo Just Transition Plan, which will be filed in June 2024 consistent with the Updated Non-Unanimous Partial Settlement Agreement approved in Proceeding No. 21A-0141E. The estimate of demand reductions resulting from TOU rates 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.

**VI. Disproportionately Impacted Communities Engagement and Outreach.**

The Settling Parties agree that the Company should engage customers in Disproportionately Impacted Communities located near the facilities<sup>1</sup> subject to this proceeding and within the Company’s electric service territory, i.e., the communities near Brush 2, Brush 4, and Arapahoe, as part of its activities under the IQ/DI Community Engagement and Outreach Plan approved in Proceeding No. 21A-0625EG. The Company shall conduct engagement and outreach either directly or through community-based organizations. The purpose of such engagement and outreach is to provide

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<sup>1</sup> "Disproportionately Impacted Communities located near the facilities" shall be defined as follows: any community that is identified as disproportionately impacted on the Colorado EnviroScreen tool ([https://teeo-cdphe.shinyapps.io/COEnviroScreen\\_English/](https://teeo-cdphe.shinyapps.io/COEnviroScreen_English/)) and is located in either: (1) the same Census Block Group as the facility, or (2) in a Census Block Group that is adjacent to the Census Block Group where the facility is located. As it relates to the Brush facilities in this Proceeding, such communities do not include communities outside of Morgan County, Colorado. Additionally, if the Commission officially adopts a definition of “Disproportionately Impacted Community,” the Commission’s definition supersedes the definition in this agreement.

education and information about why these resources are needed by the Company now and how they may be operated on an ongoing basis (to the extent that information can be shared publicly). As part of the engagement and outreach, the Company will:

- Provide documentation of engagement and outreach performed, including slides, invitees, attendance, dates of engagement, meeting notes, data or information shared and any common themes of questions by participants, and community concerns raised. Such documentation will be hosted on the Company's website. The Company will additionally notify parties to this proceeding of the location of this information on its website and, as appropriate, when such updates are posted on its website;
- On an ongoing basis, answer questions from community members and provide resources and/or a point of contact for any questions that community members may have;
- Educate customers on relevant products and services, including those focused on Disproportionately Impacted or "Higher Emissions" Communities. "Relevant products and services" include but are not limited to Demand Side Management Programs, Beneficial Electrification Programs, Renewable Energy Standard Plan programs, Transportation Electrification Plan Programs, and customer assistance plans, programs, and rates; and
- Encourage owners of the facilities subject to this proceeding to coordinate in such engagements, as well as to conduct outreach to such communities regarding employment opportunities.

The engagement and outreach described in this section shall take place in the communities located near the facilities and/or virtually.

## **VII. Market Issues.**

The Settling Parties agree that the need for the PPA extensions contemplated in this proceeding is caused by challenges faced by the utility and energy industry from market and supply chain disruptions, including those created as a result of the COVID-19 pandemic. The Company and independent power producers all faced disruptions and delays to their daily operations, which should not be attributed to mismanagement.

## **GENERAL PROVISIONS**

1. This Agreement is made for settlement purposes only. No Settling Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Agreement. Furthermore, this Agreement does not constitute agreement, by any Settling Party, that any principle or methodology contained within or used to reach this Agreement may be applied to any situation other than the above-captioned proceeding, except as expressly set forth herein. No binding precedential effect or other significance, except as may be necessary to enforce this Agreement or a Commission order concerning the Agreement, shall attach to any principle or methodology contained in or used to reach this Agreement, except as expressly set forth herein.

2. The Settling Parties agree the provisions of this Settlement Agreement, as well as the negotiation process undertaken to reach this Settlement Agreement, are just, reasonable, and consistent with and not contrary to the public interest and should be approved and authorized by the Commission.

3. The discussions among the Settling Parties that produced this Settlement Agreement have been conducted in accordance with Rule 408 of the Colorado Rules of Evidence.

4. Nothing in this Settlement Agreement shall constitute a waiver by any Settling Party with respect to any matter not specifically addressed in this Settlement Agreement.

5. The Settling Parties agree to support, or not oppose, all aspects of the Settlement Agreement embodied in this document in any hearing conducted to determine

whether the Commission should approve this Settlement Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Settlement Agreement, it will take no formal action in any administrative or judicial proceeding that would have the effect, directly or indirectly, of contravening the provisions or purposes of this Settlement Agreement. However, except as expressly provided herein, each Settling Party expressly reserves the right to advocate positions different from those stated in this Settlement Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this Settlement Agreement or its terms and conditions.

6. The Settling Parties do not believe any waiver or variance of Commission rules beyond those specifically addressed by the terms of this Settlement Agreement is required to effectuate this Settlement Agreement but agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's Rules and Regulations, if necessary, to permit all provisions of this Settlement Agreement to be approved, carried out, and effectuated.

7. This Settlement Agreement is an integrated agreement that may not be altered by the unilateral determination of any Settling Party. Further, the integrated agreement represents a balance of Settling Party interests such that no single provision can be altered without undermining the Settlement Agreement as a whole. There are no terms, representations or agreements among the parties which are not set forth in this Settlement Agreement.

8. This Settlement Agreement shall not become effective until the Commission issues a final decision addressing the Settlement Agreement. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party may withdraw from the Settlement Agreement and shall so notify the Commission and the other Settling Parties in writing within ten (10) days of the date of the Commission order. In the event a Settling Party exercises its right to withdraw from the Settlement Agreement, this Settlement Agreement shall be null and void and of no effect in this or any other proceeding.

9. 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 Agreement with respect to the issues addressed by this Settlement Agreement. This Settlement Agreement may be executed and delivered electronically and the Settling Parties agree that such electronic execution and delivery, whether executed in counterparts or collectively, shall have the same force and effect as delivery of an original document with original signatures, and that each Settling Party may use such facsimile signatures as evidence of the execution and delivery of this Settlement Agreement by the Settling Parties to the same extent that an original signature could be used.

Dated this 9th day of June 2023.

Agreed on behalf of:

**PUBLIC SERVICE COMPANY OF COLORADO**

By: /s/ Jack W. Ihle

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