

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

PROCEEDING NO. 22A-0345E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING EXPENSES INCURRED FOR THE PERIOD JANUARY 2021 THROUGH DECEMBER 2021 THAT ARE RECOVERED THROUGH THE ELECTRIC COMMODITY ADJUSTMENT AND PURCHASED CAPACITY COSTS RECOVERED THROUGH THE PURCHASED CAPACITY COST ADJUSTMENT FOR THE SAME PERIOD AND APPROVING THE CALCULATION OF 2021 SHORT TERM SALES MARGINS.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
ALENKA HAN  
GRANTING MOTION TO APPROVE UNOPPOSED  
COMPREHENSIVE SETTLEMENT AGREEMENT,  
AND GRANTING APPLICATION**

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Mailed Date: March 23, 2023

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**I. STATEMENT AND PROCEDURAL BACKGROUND**

1. On August 1, 2022, Public Service Company of Colorado (Public Service or the Company) filed its Verified Application seeking approval of the following: (1) the fuel, purchased energy, purchased wheeling, and other expenses incurred from January 1, 2021 through December 31, 2021, that have been reflected in the Company’s Electric Commodity Adjustment (ECA); (2) the purchased capacity expenses incurred by the Company from January 1, 2021, through December 31, 2021; and, (3) the Company’s calculation of the 2021 Short-Term Sales Margins that have been used to adjust the 2022 ECA Deferred Account Balance.

2. With its Application, Public Service filed the testimony of six of its executives and managers, along with numerous exhibits, some of which were designated highly confidential by Decision No. R22-0688-I, issued November 7, 2022.

3. On August 18, 2022, the Colorado Office of the Utility Consumer Advocate (UCA) filed its Notice of Intervention of Right, Request for Hearing, and Entry of Appearance. The UCA identified fifteen areas it wished to investigate, including the reasonableness and prudence of costs associated with the Company’s 2021 plant generation, its Rush Creek and Cheyenne Ridge operations, the reasonableness of costs associated with the Cabin Creek repairs and upgrades, and the reasonableness of outages at the Pueblo (Comanche) 3 plant.

4. On September 1, 2022, the Trial Staff of the Colorado Public Utilities Commission (Staff) filed its Interventions as of Right. Staff raised several issues, including whether the extended outages at Cabin Creek were reasonable, whether Public Service’s energy curtailments

were sufficient or impacted its ECA costs, and whether the performance of the Ridge Wind Project and the Rush Creek Wind Project were adequate or impacted PTC credits and customers costs.

5. Finally, on August 31, 2022, the Colorado Independent Energy Association (CIEA) moved to permissively intervene in this Proceeding. That motion was granted by Decision No. R22-0688-I, issued November 7, 2022.

6. On September 21, 2022, the Commission referred this Proceeding by minute order to an Administrative Law Judge (ALJ) for disposition.

7. By Decision No. R22-0688-I, issued November 7, 2022, the ALJ set a procedural schedule and scheduled an evidentiary hearing for February 22 – 23, 2023.

8. On December 20, 2023, Trial Staff filed its Answer Testimony and accompanying exhibits.

9. Public Service filed Rebuttal Testimony on January 24, February 6, and February 22, 2023. Some of the information contained in Public Service’s Rebuttal Testimony, as well as some information it provided in response to Trial Staff’s discovery requests, was likewise granted highly confidential status by Decision No. R23-0042-I, issued January 20, 2023, and Decision No. R23-0126-I, issued February 23, 2023.

10. On February 9, 2023, Public Service filed an Unopposed Motion to Approve Unopposed Comprehensive Settlement Agreement (Motion to Approve Settlement). The Company advised that it had reached a settlement with Commission Staff and the UCA (the Settling Parties), that CIEA does not oppose the settlement, and that no parties oppose the Motion to Approve Settlement.

11. After reviewing the proposed Unopposed Comprehensive Settlement Agreement and Motion to Approve Settlement, on February 17, 2023, the undersigned ALJ posed several questions to the Settling Parties, asking them to clarify certain terms and provisions in the Unopposed Comprehensive Settlement Agreement. The Settling Parties filed their Joint Response to the questions posed by the ALJ on February 24, 2023.<sup>1</sup>

12. The undersigned ALJ now considers the Settling Parties' proposed Unopposed Comprehensive Settlement Agreement.

## **II. TERMS OF THE SETTLEMENT AGREEMENT**

### **A. Costs**

#### **1. Rush Creek Wind Project Costs<sup>2</sup>**

13. The Settling Parties agree that Public Service will make a one-time credit to customers of \$2 million, solely in recognition of impacts to 2021 wind production associated with construction-related considerations at the Rush Creek Wind Project facility.

14. This one-time credit shall be flowed back to customers through the first ECA quarterly filing following the approval of the Unopposed Comprehensive Settlement Agreement by a final Commission decision.

#### **2. Cheyenne Ridge Wind Project Costs<sup>3</sup>**

15. No credits will inure to customers, nor will any disallowance be ordered by the Commission for Cheyenne Ridge Wind Project performance in 2021.

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<sup>1</sup> Joint Response to Questions Regarding Unopposed Comprehensive Settlement Agreement in Decision No. R23-0111-I (Joint Response), filed February 24, 2023.

<sup>2</sup> Unopposed Comprehensive Settlement Agreement, Settlement Agreement, § I.

<sup>3</sup> *Id.*, Settlement Agreement, § II.

**3. Titan Solar Facility Curtailment Costs<sup>4</sup>**

16. The Settling Parties likewise agree that no credit will be provided to customers for Titan Solar Facility Curtailment Costs in 2021.

**B. Cabin Creek Upgrade Project<sup>5</sup>**

17. The Settling Parties agree that a “holistic prudence review” is appropriate for the Cabin Creek Upgrade Project. Under such a review process:

- a) No interim credit will be provided to customers ahead of the holistic prudence review.
- b) Public Service will not pursue claims of waiver or time-bar in the holistic prudence review.
- c) The holistic prudence review will occur in a standalone Application Proceeding ideally to be filed by May 1, 2024, but no later than July 31, 2024.
- d) Cabin Creek construction is projected to be completed by December 31, 2023. If construction is not completed by July 1, 2024, the Company will inform the Commission and file a request for a variance. The other Settling Parties reserve the right to protest any such variance request. If a variance is requested and granted, the Application Proceeding for the holistic prudence review will be filed within three (3) months of completion of the Cabin Creek Upgrade Project.

18. In addition, with Public Service’s first quarterly ECA filing following final Commission approval of the Unopposed Comprehensive Settlement Agreement, the Company will advance \$5 million in “anticipated liquidated damages” associated with the Cabin Creek Upgrade Project to its customers. The liquidated damages are to be credited to all its retail customers over one quarter, for the first or third quarter of a year, based upon the customers’ energy usage in

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<sup>4</sup> *Id.*, Settlement Agreement, § V

<sup>5</sup> *Id.*, Settlement Agreement, § III.

kilowatt-hours over the applicable quarter, “except for service provided under the Economic Development Rate.”<sup>6</sup>

- a) If final Commission approval of the Unopposed Comprehensive Settlement Agreement is received before May 31, 2023, Public Service will include the anticipated liquidated damages credits in the third quarter ECA filed May 31, 2023, “to be effective July 2023 through September 2023.”
- b) If final Commission approval occurs between June 1, 2023, and November 30, 2023, the credit will be incorporated into the first quarter ECA effective January through March 2024.

## C. Reporting

### 1. Pueblo (Comanche) 3 Reporting<sup>7</sup>

19. Public Service agrees to provide monthly reports to the Settling Parties documenting all unplanned outages at Pueblo (Comanche) 3 greater than 24 hours in duration “or where the availability factor goes below a threshold determined by the Company and Staff for a multi-day duration.”

20. The reports shall be due ten (10) “days after the end of each month” (i.e., on the 10<sup>th</sup> of each month).

21. Reporting shall commence following the Commission’s final approval of the Unopposed Comprehensive Settlement Agreement and shall continue for two years from the date of the Commission’s final approval.

22. Thereafter, the Settling Parties shall file a pleading in the Company’s “most current ECA/ [Purchased Capacity Cost Adjustment (PCCA)] annual prudence review” Proceeding with the Commission indicating whether such reporting should continue. The other Settling Parties

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<sup>6</sup> Joint Response, p. 2.

<sup>7</sup> Unopposed Comprehensive Settlement Agreement, Settlement Agreement, § VI.

may respond to the pleading if the Settling Parties have not reached a consensus regarding the continuation of the monthly reports and may seek the Commission's determination concerning the fate of ongoing reporting.

## **2. Daily System Supply Reports<sup>8</sup>**

23. The Settling Parties agree to confer regarding potential changes to the daily supply reports the Company currently provides to Staff. Any changes made to the daily reports would be to increase the reports' usefulness to Staff while "managing the burden on the Company."

## **3. Additional Quarterly ECA Reporting<sup>9</sup>**

24. The Settling Parties agree that Public Service shall add the following details to its quarterly ECA filings:

- a) Wholesale sales (MWh);
- b) Market sales (from system generation); and
- c) Short-term market purchase volumes (MWh).

25. This more detailed reporting in the ECA filings shall commence with Public Service's first quarterly ECA filing following final Commission approval of this Unopposed Comprehensive Settlement Agreement.

## **4. Curtailment Reporting<sup>10</sup>**

26. The Settling Parties agree to discuss the curtailment reporting issues raised by Staff in the curtailment stakeholder group to be convened pursuant to the Updated Non-Unanimous Partial Settlement Agreement reached in Proceeding No. 21A-0141E.

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<sup>8</sup> *Id.*, Settlement Agreement, § VII.

<sup>9</sup> *Id.*, Settlement Agreement, § VIII.

<sup>10</sup> *Id.*, Settlement Agreement, § IX.

27. Public Service also “commits to providing strategies for enhancing data regarding curtailment drivers and investment strategies to manage curtailments” in the Company’s next ECA/PCCA annual prudence review or in an electric resource planning proceeding, for consideration by stakeholders and to inform future filings.

**5. Additional Cheyenne Ridge Wind Project Reporting<sup>11</sup>**

28. The Settling Parties agree that Public Service will add a table to its Customer Protection Mechanism Annual Reports filed in Proceeding No. 18A-0905E “showing the facility’s forecasted and actual production with a breakdown of the causes of generation losses (or overproduction), including the MWh allocated to each cause.”

**D. Company-Owned Income-Qualified (IQ) Community Solar Gardens (CSGs)<sup>12</sup>**

29. The Settling Parties agree that Public Service shall credit its customers approximately \$178,485 for the performance of certain Company-owned CSGs in 2021.

30. The credits will inure to all the Company’s retail customer in two ways: (1) a credit to the Renewable Energy Standard Adjustment (RESA) account related to upfront Renewable Energy Credit REC) incentives; and (2) a credit directly to the ECA for the remainder.<sup>13</sup>

31. The one-time credit to the RESA account will amount to approximately \$71,372.50. The Company will credit this sum to the RESA account “upon receipt of a final Commission Decision approving the [Unopposed Comprehensive] Settlement Agreement.”<sup>14</sup>

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<sup>11</sup> *Id.*, Settlement Agreement, § X.

<sup>12</sup> *Id.*, Settlement Agreement, § VI.

<sup>13</sup> Joint Response, pp. 3-4.

<sup>14</sup> *Id.*

32. The remainder of the credit — totaling approximately \$107,112.50 — will be credited to all of Public Service’s retail customers over one quarter “in the first quarterly ECA Advice Letter” following the Commission’s final approval of the Unopposed Comprehensive Settlement Agreement. If such approval occurs before May 31, 2023, Public Service will include this credit in the third quarter ECA filed May 31, 2023, to be effective July through September 2023. If the Commission’s final approval occurs between June 1 and August 31, 2023, the credit will be incorporated into the fourth quarter ECA effective October through December 2023.<sup>15</sup>

### III. FINDINGS AND CONCLUSIONS

33. The Settling Parties have the burden of proving by a preponderance of the evidence that the Settlement Agreement is just and reasonable. In reviewing the terms of the Settlement Agreement, the undersigned ALJ applied the Commission’s direction and policy with respect to reviews of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

34. The Commission has an independent duty to determine matters that are within the public interest. *See, Caldwell v. Pub. Utils. Comm’n*, 692 P.2d 1085, 1089 (Colo. 1984).

35. The undersigned ALJ has reviewed the full administrative and evidentiary record, including: the direct, answer, and rebuttal testimony filed by the Parties; the terms and conditions of the Unopposed Comprehensive Settlement Agreement; and the Settling Parties’ Joint Response to the questions posed by the undersigned ALJ. Further, the ALJ has duly considered the positions of the Parties in this matter and weighed the evidence presented.

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<sup>15</sup> *Id.*

36. Based on a review of the entire record, the undersigned finds that approval of the Application filed in this Proceeding is consistent with the Unopposed Comprehensive Settlement Agreement and is in the public interest. The Unopposed Comprehensive Settlement Agreement proposes a fair and timely resolution of all contested issues and substantial evidence shows that its terms will benefit the Settling Parties and Public Service's customers.

37. The ALJ further finds that the Settling Parties have established by a preponderance of the evidence that the Unopposed Comprehensive Settlement Agreement is just, reasonable, in the public interest, and should be accepted by the Commission.

#### **IV. ORDER**

##### **A. The Commission Orders That:**

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

2. The Verified Application seeking approval of (1) the fuel, purchased energy, purchased wheeling, and other expenses incurred from January 1, 2021 through December 31, 2021, that have been reflected in Public Service's Electric Commodity Adjustment (ECA); (2) the purchased capacity expenses incurred by the Public Service from January 1, 2021, through December 31, 2021; and, (3) Public Service's calculation of the 2021 Short-Term Sales Margins that have been used to adjust the 2022 ECA Deferred Account Balance, filed by Public Service on August 1, 2022, is granted and approved as amended by the Unopposed Comprehensive Settlement Agreement, consistent with the discussion above.

3. The Unopposed Comprehensive Settlement Agreement filed by the Settling Parties on February 9, 2023, and attached to this Decision as Attachment A, is approved, consistent with the discussion above.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,  
Interim Director