

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0315EG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS COMBINED ELECTRIC AND NATURAL GAS DEMAND-SIDE MANAGEMENT AND BENEFICIAL ELECTRIFICATION PLAN FOR CALENDAR YEAR 2023.

COMMISSION DECISION APPROVING, WITHOUT MODIFICATION, COMPREHENSIVE SETTLEMENT AGREEMENT; GRANTING APPLICATION AS MODIFIED BY SETTLEMENT AGREEMENT; ORDERING COMPLIANCE FILINGS; AND ISSUING CERTAIN DIRECTIVES TO INCREASE COMPETITION FOR SERVICES

Mailed Date: June 8, 2023
Adopted Date: May 11, 2023, and May 17, 2023

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I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission addresses the Application for Approval of its 2023 Electric and Natural Gas Demand-Side Management (DSM) and Beneficial Electrification (BE) Plan (2023 DSM & BE Plan or Plan), filed by Public Service Company of Colorado (Public Service or the Company) on July 1, 2022.

2. The Commission finds the Comprehensive Settlement Agreement, filed among Public Service, the City of Boulder (Boulder), Colorado Energy Consumers (CEC), the Colorado Energy Office (CEO), Climax Molybdenum Company (Climax), the City and County of Denver (Denver), Energy Efficiency Business Coalition (EEBC), Energy Outreach Colorado (EOC), Trial Staff of the Colorado Public Utilities Commission (Staff), Southwest Energy Efficiency Project (SWEEP), the Office of the Utility Consumer Advocates (UCA), and Western Resource

Advocates (WRA) (the Settling Parties), pursuant to Rule 1408 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, on December 2, 2022 (Settlement Agreement), is in the public interest and should be approved without modification.

3. The Commission finds the 2023 DSM & BE Plan, as modified by the Settlement Agreement, is in the public interest and should be approved.

4. The Commission considers, and grants, the outstanding motions in this Proceeding, as discussed below.

5. Public Service is ordered to file a compliance advice letter to implement the tariffs necessary to implement the approved 2023 DSM & BE Plan, consistent with our findings, conclusions, and directives in this Decision. We authorize Public Service to file the compliance advice letter on not less than two business days' notice.

6. By this Decision, the Commission also addresses the policy concerns raised by the sole non-settling party to this Proceeding, intervenor Iconergy LTD (Iconergy), who opposes certain aspects of the Company's proposed 2023 DSM & BE Plan but does not object to any of the modifications agreed to in the Settlement Agreement. As set forth below, the Commission finds good cause to issue certain general directives to Public Service in order to increase competition for DSM services and address certain of these concerns.

B. Procedural History

7. On July 1, 2022, Public Service filed its Application for approval of its 2023 DSM & BE Plan. In the Application, Public Service stated the proposed Plan is a combined electric and gas plan that contains comprehensive descriptions of each of the electric and gas DSM programs the Company proposes for calendar year 2023, including BE measures. Public Service

explained, while the Company first introduced its existing BE offerings as part of its 2021-22 DSM Plan, this filing is the Company's first DSM Plan to incorporate the new BE Plan elements required by Senate Bill 21-246, effective September 7, 2021.¹ The Company submitted direct testimony of several witnesses in support of its Application.

8. Contemporaneously with the Application, Public Service filed a Motion for Extension of its 2021-2022 Demand-Side Management Plan (Motion for Extension) and Motion for Variance of Rules 4753(k) and 4756(b) (Motion for Variance). The Commission addresses these motions through this Decision, as discussed below.

9. By Decision No. C22-0530-I, issued September 8, 2022, the Commission established the following parties to this Proceeding: Public Service, Boulder, CEC, CEO, Climax, Denver, EEBC, EOC, Iconergy, Staff, SWEEP, UCA, and WRA.

10. On September 27, 2022, Public Service filed Supplemental Direct Testimony, as directed by the Commission through Decision No. C22-0530-I.

11. On October 14, 2022, Public Service filed a Motion for Extraordinary Protection of Highly Confidential Information, which the Commission granted by Decision No. C22-0665-I, issued October 28, 2022.

12. On November 28, 2022, Public Service filed a Notice of Comprehensive Settlement in Principle. On December 2, 2022, Public Service filed the Settlement Agreement along with a Joint Motion to Approve Comprehensive Settlement Agreement.

¹ Concurrent with this Proceeding, Public Service filed in Proceeding No. 22A-0309EG an application addressing "strategic issues" surrounding electric and gas DSM and BE to apply to plans and programs for 2024-2026. This Plan filing captures the Commission's strategic issues directives from prior Proceeding No. 17A-0462EG as well as the Company's prior DSM Plans reviewed in Proceeding Nos. 18A-0606EG and 20A-0287EG.

13. In accordance with a modified procedural schedule adopted after the filing of the Settlement Agreement, the parties filed the following additional testimony. On December 19, 2022, witnesses for each of Public Service, CEO, Staff, and SWEEP filed settlement testimony in support of the Settlement Agreement. Also on December 19, 2022, the non-settling party, Iconergy, filed answer testimony outlining its remaining objections to the Plan. On January 17, 2023, Public Service filed rebuttal testimony responding to those objections.

14. On December 2, 2022, Public Service filed a Second Motion for Extraordinary Protection of Highly Confidential Information, which the Commission granted by Decision No. C22-0843-I, issued December 30, 2022.

15. Throughout the Proceeding, the Commission received written comment from members of the public as well as from Public Service customers, third-party providers of energy services, and community and business groups. On February 1, 2023, the Commission held a remote public comment hearing at which it received oral comments. These written and oral comments are part of the administrative record of this Proceeding.

16. On February 21, 2023, the Commission convened a one-day evidentiary hearing, during which parties had opportunity for cross examination and the Commissioners questioned certain witnesses. In addition, the Commission admitted Hearing Exhibit 1500 and all of the documents listed thereon into evidence. These documents consist of all of the prefiled testimony and attachments in the Proceeding. In addition, during the course of the hearing, the following hearing exhibits were offered and admitted into the record: HE 107 (Settlement Agreement), HE 1203, HE 1204, HE 1205, HE 1206.

17. On March 17, 2023, Public Service, jointly with Boulder, CEO, Denver, EEBC, EOC, Staff, SWEEP, UCA, and WRA, filed a statement of position in support of the Settlement

Agreement. In the joint statement of position, Public Service individually responds to Iconergy's recommendations. CEC filed its own statement of position, supporting the Settlement Agreement but taking no position on Iconergy's proposals. Climax also filed its own statement of position, stating concern that, in resolving Iconergy's objections, the Commission's decisions should not exceed the settled budgets. Iconergy filed a statement of position, continuing its position that, although it does not object to the provisions of the Settlement Agreement, it does not go far enough because it does not open sufficient programs to more DSM providers.

18. The Commission conducted live deliberations in this Proceeding at a Commissioners' Deliberations Meeting on May 11, 2023, and a Commissioners' Weekly Meeting on May 17, 2023, resulting in this Decision.

C. Discussion

1. Main Terms of the Settlement Agreement

a. Energy and Demand Savings Targets and Budgets

19. Under Sections I.A. through I.C. of the Settlement Agreement, the Settling Parties agree to electric and gas energy efficiency budgets of \$92.9 million and \$25.1 million, respectively. With those budgets, Public Service will pursue energy savings targets of 484 gigawatt hours (GWh) of electric energy savings and 898,487 dekatherms (Dth) of natural gas savings. Public Service will make best efforts to meet or exceed the 500 GWh electric energy savings target within the approved budget.

20. For electric demand reduction from electric energy efficiency, Public Service will target 99.8 megawatts (MW) of electric demand reduction.

21. For electric demand reduction from electric demand response, Public Service will use an incremental electric demand response target of 105 MW of demand response capacity with a budget of \$24.6 million. The incremental target includes new participants in all programs as well as customers on programs with one-year agreements including: Critical Peak Pricing, Electric Vehicle Critical Peak Pricing, Peak Day Partners, and Peak Partner Rewards.

b. Products, Measures, and Pilots

22. As set forth in Sections I.D. and I.E. of the Settlement Agreement, the Settling Parties agree to modifications to the proposed products, measures, and pilots in the 2023 Plan, which include seven combined electric and gas education and market transformation products and the associated combined budget of \$5.4 million, four indirect planning and research services and the associated combined electric and gas budget of \$7.9 million, and continuation of the Company's existing geo-targeting pilot and the associated budget of \$376,617.

23. The Settling Parties also agree to certain portfolio-wide modifications including commitments by Public Service to provide contractors and customers with education on the availability of, and terms associated with, the federal Inflation Reduction Act of 2022, if federally funded DSM or BE incentives or tax credits become available to Public Service customers during the 2023 Plan year. Similarly, Public Service commits to review its programmatic rebates and incentives and discuss with stakeholders at a future DSM quarterly roundtable whether adjustments to those rebates and incentives are appropriate if incentives become available to Public Service customers through either the Inflation Reduction Act or the federal Infrastructure Investment and Jobs Act of 2021.

24. Public Service agrees to provide two live, in-person trainings on BE strategies to Residential and Commercial contractors or distributors in 2023 with training, design, and participation linked to the Residential Energy Efficiency Program.

25. Public Service also commits, in the stated interests of promoting transparency and accessibility for third-party providers, to: (1) communicating upcoming requests for proposals (RFPs) during its DSM quarterly roundtables; (2) posting information about upcoming RFPs on its website as well as providing links with the relevant information about participating in the RFP; and (3) notifying interested parties of RFPs through its DSM distribution e-mail list when each RFP opens. Public Service further commits to, as part of the RFP process, clearly identify the requisite criteria on which participants will be evaluated for each RFP through its RFP documents.

26. Public Service agrees to request that contractors who install heat pump systems for space heating document the pre-existing heating system and the type of backup heat that will likely be used on very cold days. This request will be optional for customers. The Company agrees to report annually, in a future DSM quarterly roundtable, on the results of this request and incorporate any statistically significant findings into its program design.

27. Public Service agrees to estimate greenhouse gas emissions on both a net and incremental basis from BE in its annual status report, based on the deemed per-measure savings assumptions used in developing the 2023 Plan, with emissions presented on both a lifetime and first-year basis. Public Service will provide the assumptions relied upon in developing the estimated net greenhouse gas emissions from BE and explain the limits of those assumptions. In addition to reporting on estimated avoided gas resulting from BE, Public Service will report on increased electric load resulting from BE. The Settling Parties agree that increased electric

consumption resulting from BE is provided for informational purposes and will not represent “negative savings” consistent with the treatment of BE in the Company’s 2021-22 DSM Plan.

c. Residential Energy Efficiency Program

28. As set forth in Section I.F. of the Settlement Agreement, the Settlement Agreement modifies the ongoing Residential Energy Efficiency Program. Public Service will create a top tier of rebates within the Energy Star® New Homes program for highly efficient homes that are primarily heated with electricity (\$8,000) or for fully electric homes (\$10,000). Qualifying homes will, at a minimum, have an envelope with UA \leq 100 percent of IECC 2021. To qualify, a home may not utilize electric resistance heating as the primary source for space or water heating.

29. Public Service will add an additional bonus rebate of at least \$500 for customers who install major weatherization measures within six months of installation of heat pumps for space heating. Public Service will increase its rebates associated with electric heat pumps, including ground source heat pumps, by at least ten percent from the values proposed in the direct case across its service territory and throughout its DSM and BE portfolio while also increasing marketing of heat pumps.

30. The Company also commits to market and continue to research energy efficiency opportunities related to heat pumps and weatherization, such as a commitment to develop at least three separate geographically targeted marketing campaigns during the 2023 Plan that will include outreach or educational activities to promote the installation of heat pumps or weatherization in neighborhoods with a high density of homes with electric resistance heating, or constrained part of the gas system, and a commitment to research, with interested stakeholders, the potential to add advanced duct sealing to its insulation and air sealing, whole home

efficiency, or new homes products during the course of implementing the 2023 Plan and the potential to phase out rebates for traditional air conditioners and gas water heaters in order to allocate additional resources towards the adoption of heat pumps as part of its next plan.

31. Public Service agrees to research, in consultation with EEBC and other interested stakeholders, Energy Efficiency Ratio (EER) requirements for variable capacity heat pumps, and remove or modify the minimum EER requirements for variable capacity heat pumps if doing so will cost-effectively broaden heat pump participation without increasing peak power demand in the summer. The Settlement Agreement anticipates the Company will make a determination by May 31, 2023, and provide explanation of its analysis and rationale.

32. Public Service agrees to add a midstream incentive approach (without eliminating customer incentives) for heat pump water heaters. The design of the midstream incentive approach for distributors will be developed in consultation with stakeholders and proposed through a 60-Day Notice not more than 60 days after a final decision approving the Plan.

d. Income-Qualified or Disproportionately Impacted Community Customers

33. Under Section I.G. of the Settlement Agreement, the Settling Parties agree to terms specific to Income-Qualified or Disproportionately Impacted Community (IQ/DI Community) customers. Public Service will implement a new pilot within the Low Income (*i.e.*, IQ) program to test a geographic prequalification approach to DI Community neighborhood weatherization. The budget for this pilot will be in addition to the IQ budget in the filed Plan.

34. Public Service commits to discussing its outreach and engagement efforts as part of each DSM quarterly roundtable in 2023. The Company will work to develop the ability to screen participating households for auto-enrollment in the Company's Electric and Gas

Affordability Programs or provide alternative procedures including identifying a process for estimating the appropriate full annual bill for BE program or pilot participants.

35. Public Service also agrees to increase the Refrigerator Replacement rebate from \$630 to \$900 within the IQ Single-Family Weatherization product.

e. Business Energy Efficiency Program

36. Through Section I.H. of the Settlement Agreement, the Settling Parties agree to several modifications to Public Service's ongoing Business Energy Efficiency Program including commitments to continue actively studying prescriptive BE measures for commercial customers. At a minimum, the measures considered will include: (a) measures that are identical to the 2023 residential BE measures, including, but not limited to, ducted and ductless air source heat pumps (including variable refrigerant flow systems); (b) heat pump water heaters; and (c) dual-fuel or heat pump rooftop units.

37. Public Service commits to expand the promotion of BE measures within the Business Energy Assessment product, and to adopt all 2022 bonuses from the business lighting program for all invoices dated on or before September 30, 2023, and submitted by November 30, 2023. The Company will restart bonuses on January 1, 2024, if the 2023 Plan carries over into 2024. The Company also commits to review and adjust wattage requirements, on an annual basis, for Business lighting products in consultation with stakeholders. Any modifications, if cost-effective, to these requirements will be made through a 60-Day Notice.

38. Public Service also agrees to increase incentives for lighting controls, including standard controls, and more innovative networked lighted controls, with a target of incentives equal to 30 percent of installed project cost.

39. For New Construction–Energy Design Assistance, Business Energy Assessment, Strategic Energy Management products, Public Service agrees to publish reasonable criteria to be met by third-party providers who want to participate as a third-party implementer for the Energy Design Assistance product. The Company will develop an application and approval process for providers that want to participate in the product and will make the list of approved providers available on its website and to its account managers.

40. The Company agrees to issue its RFP for the Business Energy Assessment and Strategic Energy Management products by June 30, 2023.

41. The Company agrees to discuss, through the stakeholder process, Energy Design Assistance product’s success utilizing this model and whether other products should be transitioned to this model as part of its next plan.

f. Demand Response Program

42. Through Section I.I. of the Settlement Agreement, Public Service makes several commitments regarding its demand response program, including an agreement to initiate an RFP in the first half of 2023 to solicit ideas from vendors for new demand response offerings that achieve peak demand reduction by residential customers with advanced meters through a pay-for-performance, technology neutral approach. If the RFP responses indicate potential that will reasonably lead to a cost-effective offering, the Company agrees to design one or more products or pilot that would be included in its next plan.

43. Public Service agrees to consider, in consultation with stakeholders, implementing a pilot program that tests the feasibility of carrying out demand response with networked lighting controls, and reporting on the results of this examination to the DSM quarterly roundtable no

later than third quarter 2023. If this strategy shows promise, the Company agrees to move forward with the pilot program in the second half of the year.

44. Public Service agrees to cross promote its DSM and BE programs and incentives, to the extent practicable, when conducting outreach, engagement, and education for other retail customer programs.

45. Finally, the Settlement Agreement anticipates the Company will file a supplemental outreach and engagement plan by May 31, 2023, detailing planned or anticipated outreach, engagement, and education opportunities or events conducted under the Plan, for customers in IQ households or DI Communities.

g. Modeling

46. In Section III of the Settlement Agreement, the Settling Parties agree the Commission should authorize Public Service to transition to EnCompass for purposes of its DSM modeling for purposes of this 2023 Plan.

47. The Settling Parties also agree the Commission should approve for this Plan the marginal cost outputs used to determine the avoided cost of energy in the Company's EnCompass modeling contained in the Company's direct testimony. If no methodology for the calculation of net emissions impacts is approved within Public Service's ongoing DSM strategic issues proceeding, Proceeding No. 22A-0309EG, the Company agrees to develop and present in the next DSM plan an approach for calculating the net emissions impacts of BE on a marginal energy basis by hour and day type.

48. The Settling Parties further agree the Commission should approve for this Plan the avoided cost of generation capacity and avoided transmission and distribution costs as set forth in Public Service's direct testimony.

h. Cost Recovery

49. Under Section II of the Settlement Agreement, the Settling Parties support approval of Public Service's recovery of its costs for the 2023 Plan through the existing electric and gas Demand Side Management Cost Adjustments (DSMCA) tariff mechanisms, as appropriate. The Settling Parties agree the Commission should approve Public Service's current practice of allocating BE measure costs to the gas DSMCA for the 2023 Plan year.

i. Litigation Expenses

50. Under Section IV of the Settlement Agreement, Public Service agrees to withdraw the request in its Application to defer expenses associated with preparing and litigating this Proceeding into a regulatory asset without interest to be brought forward in a future cost recovery proceeding.

j. Rule Waivers

51. In Section VII of the Settlement Agreement, the Settling Parties agree the Commission should approve the request in Public Service's Motion for Variance to waive Rule 4756(b), 4 CCR 723-4, which prohibits fuel switching from natural gas to other fossil fuel-derived energy sources within a gas utility's DSM program. The Settling Parties agree that waiver is appropriate in order to continue the Company's BE offerings.

52. The Settling Parties likewise agree the Commission should approve Public Service's request to waive Rule 4753(k), 4 CCR 723-4, which limits annual natural gas DSM

expenditures to 25 percent over the Commission-approved annual budget absent approval of a plan amendment. The Settling Parties agree that waiver is appropriate to accommodate the Company's proposed \$25.1 million natural gas energy efficiency budget and ensure the Company can continue to increase natural gas energy efficiency savings and assist its natural gas customers with reducing their CO₂ emissions.

k. Compliance and Implementation Procedures

53. Under Section V of the Settlement Agreement, the Settling Parties request the Commission authorize Public Service to file a compliance advice letter on not less than two business days' notice to implement the Commission's final decision in this Proceeding. In addition, Public Service commits to file an updated version of its approved 2023 Plan within 30 days after the Commission's final decision. The Company agrees to separately document its BE efforts including participation, expenditures, costs, emissions, and mTRC test ratios. Public Service also agrees to provide this reporting in its annual report. In addition, Public Service commits to include measure-level or appliance-level reporting for products with multiple types of appliances in its annual report when the product includes heating, cooling, or building shell measure in its annual report.

2. Iconergy Objections and Recommendations

54. Iconergy raised three main objections in this Proceeding: that Public Service uses ratepayer funds to provide free or discounted DSM services for to its customers in an unregulated market; that the programs are limited to few implementers; and that Public Service does not open these programs on a regular basis in a transparent fashion for additional implementers to participate.

55. Iconergy takes the position that Public Service's use of selected third-party implementers to deliver DSM services is not in the public interest. Iconergy objects that Public Service's selected implementers provide free services to clients on behalf of Public Service, who funds these contracts through the DSMCA rider. Iconergy further objects that the ability of companies such as Iconergy to be selected is low because Public Service does not regularly issue RFPs and its selection process is opaque and not publicly available.

56. Iconergy challenges that Public Service has misinterpreted in this Proceeding the Commission's prior relevant directives and overstated the support for its third party implementer system.² Among other arguments, Iconergy contends the Commission's directives in prior DSM strategic issues Proceeding No. 10A-554EG, should not be construed as support for the Company to directly compete in the DSM services market or to limit the number of providers it uses to implement its programs. Iconergy contends the cited decision suggests that bidding is a way for the Company to ensure that programs are cost-effective.

57. Further, Iconergy points out Public Service was previously ordered in Proceeding No. 10A-554EG to provide the specific criteria under which it will evaluate bids, which it asserts the Company has not yet done. Iconergy contends Public Service has unconstrained discretion to interfere in the market, substituting its judgment for that of its customers to determine what weight should be assigned to each criterion. Iconergy disputes Public Service's claim that customers could become "overwhelmed" by having to choose among providers.³

² Iconergy SOP at p. 3.

³ Iconergy SOP at p. 8 (citing Hrg. Tr. at 39:15-18).

Iconergy responds that, in its experience, customers prefer choice. Iconergy adds that the Commission has recognized commercial and industrial customers are typically more sophisticated than residential customers and affirmed the market should determine providers are used.

58. Iconergy contends Public Service improperly, and unfairly, uses ratepayer funds for unregulated activities when it directly provides free DSM services using funds collected through the DSMCA rider. Iconergy characterizes this as Public Service using ratepayer funds to make services available to customers at a below-market price while excluding other providers from the potential sales opportunities that stem from those services because they are prevented from joining the Company's programs.

59. Iconergy also puts forth legal arguments that, by definition, a public utility's provision of electricity is regulated by the Commission and not its efforts to not provide electricity,⁴ and that, when providing DSM services using funds collected through the DSMCA rider, Public Service has an unfair competitive advantage in contravention of the mandate in § 40-3-114, C.R.S., that, "The commission shall ensure that regulated electric and gas utilities do not use ratepayer funds to subsidize non-regulated activities."⁵ Iconergy disputes Public Service's position in testimony that it does not compete with the likes of Iconergy because the utility is focused on the public interest rather than any particular program.⁶

⁴ Iconergy SOP at p. 6 (claiming definition of "public utility" in § 40-1-103(2)(a), C.R.S., suggests the provision of electricity brings Public Service under the Commission's regulatory jurisdiction, not its efforts to *not* provide electricity, although that is also in the public interest).

⁵ Iconergy SOP at pp. 8-10 (arguing Public Service improperly uses ratepayer funds to compete in unregulated activities).

⁶ Iconergy SOP at p. 10 (citing Hr. Ex. 106, Mark Rebuttal Testimony at 11:21-12:3 (Public Service testifying: "Iconergy's claims that Public Service is somehow 'competing' with it are therefore non-sensical as Public Service is tasked with furthering the public interest, not the business interests of any single vendor.")).

Iconergy responds that, the Company, through its third-party implementers, provides the same DSM services as Iconergy, *e.g.*, retro-commissioning, strategic energy management, energy modeling, energy auditing, electric vehicle analysis, and more.

60. Iconergy also objects that it is difficult to learn about Public Service's programs and that the utility's website lacks transparency. Iconergy contends these arguments are confirmed by the Company's pledges in the Settlement Agreement to be more transparent.

61. Finally, Iconergy argues that other states provide a more open DSM system, with greater transparency, and more opportunities for the market to link providers and customers.

62. In light of these objections, Iconergy offers the following recommendations for process changes that it believes would increase competition for services for DSM services:

- (a) Public Service should create a publicly-accessible website through which procurements of third-party services are managed, third parties are notified of open opportunities and schedule and requirements of the same are communicated, and evaluation criteria for submitted bids are provided;
- (b) Public Service should increase the role of third-party partnerships in implementing its business program and approve more third parties to be eligible to provide rebate eligible upstream services such as engineering and energy modeling;
- (c) Public Service should create an easily found customer-facing vendor list for qualified third parties that offers DSM services to business customers;
- (d) Public Service should increase the frequency with which it considers new third parties for approval to provide upstream services to business customers; it should provide a rolling and ongoing opportunity for new third parties to submit credentials and be considered for approval;
- (e) The Commission should require Public Service to provide incentives and rebates to all commercial and industrial customers that successfully participate in its DSM plans, using approved providers;
- (f) Public Service should provide blind evaluation of bids to determine vendor qualification;

- (g) A third-party engineer should ensure Public Service adheres to the Commission-approved plan.

3. Public Service Response to Iconergy

63. Public Service recommends the Commission find the Settlement Agreement reasonably addresses Iconergy's concerns and need not implement any of Iconergy's additional recommendations put forth in this Proceeding. The Company responds that Iconergy fails to present sufficient evidence to demonstrate that its proposals would result in actual benefits to utility customers, such as cost savings.

64. Public Service maintains the Settlement Agreement already provides reasonable enhancements to its third-party implementation RFP process, where it has committed to: (1) communicate RFPs during its DSM quarterly roundtables; (2) post information about upcoming RFPs on its website as well as providing links with the relevant information about participating in the RFPs; and (3) notify interested parties of RFPs through its DSM distribution e-mail list when an RFP opens. The Company also agrees to identify the requisite criteria on which participants will be evaluated for each RFP through its RFP documents.

65. Public Service responds that Iconergy has failed to present evidence or rationale demonstrating that these commitments are inadequate. Public Service disputes Iconergy's suggestion that it has an obligation to verify interested parties receive information electronically and verbally communicate to stakeholders regarding RFPs; however, it commits to review its website and ensure prominent visibility of RFP information. Public Service states it welcomes more engagement and attendance from Iconergy and other providers at its DSM roundtables and commits to actively engage with stakeholders who elect to engage in that forum.

66. Public Service also responds, as evidenced by its commitments to process changes in the Settlement Agreement, the Company acknowledges that there is room for improvement in refreshing its RFPs and is amenable to exploring opening programs to more implementers. The Company objects, however, to Iconergy's recommendation to open all third-party implementer programs to all interested vendors on grounds that this broad approach neglects key public interest considerations clearly reflected in the record of this Proceeding.

67. Regarding Iconergy's recommendation that the Company move more programs to the open sourcing model, Public Service notes it has already committed through the Settlement Agreement to engage with stakeholders on how the open model employed for the Energy Design Assistance program under the 2023 Plan works, and whether other products should be transitioned to this model as part of its next plan.

68. Public Service explains that limiting the number of trade partners allowed to submit rebates ensures that only reputable vendors provide services and reduces the amount of needed administrative resources to manage vendors and evaluate vendor work.⁷ Public Service asserts it is important for it to have flexibility to balance the demands of conducting solicitations and managing vendors against the costs and demands placed on its internal teams, in order to maximize value to all customers, including non-participants.⁸

⁷ Hr. Ex. 105, Mark Rebuttal Testimony at 10:9-21.

⁸ Hr. Ex. 105, Mark Rebuttal Testimony at 10:9-21.

D. Findings and Conclusions

1. Approval of Settlement

69. The Commission's Rule 1408(b), 4 CCR 723-1, allows the Commission to approve, deny, or require modification to any settlement as the public interest requires. The Commission considers whether the settled terms adequately address the issues raised in the proceeding and reach a result that is just and reasonable and in the public interest. As the proponents of an order, the settling parties bear the burden of proof to establish by a preponderance of the evidence that the settlement is just and reasonable and in the public interest.⁹ In determining whether to approve a settlement, the Commission balances the longstanding policy of encouraging settlements in contested cases¹⁰ and the Commission's independent duty to determine whether matters are in the public interest.¹¹ The Commission does not necessarily need to find the settled terms are the same as the Commission would have reached; rather, the Commission considers whether the settled terms adequately address the issues raised in the proceeding and reach a result that is just and reasonable and in the public interest. The Commission applies these principles and legal standards here to assess the Settlement Agreement as a resolution of the issues in this Proceeding.

70. In support of the Commission approving the Settlement Agreement, the Settling Parties advocate that the Settlement Agreement presents a one-year plan that builds on programming and accomplishments that Public Service has implemented and achieved to date,

⁹ Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1500 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

¹⁰ See, e.g., Rule 1408 of the Commission's Rules of Practice and Procedure, Rule 4 CCR 723-1.

¹¹ See, e.g., Proceeding No. 11A-833E, Decision No. C12-1107 at 9 (mailed September 24, 2012) citing *Caldwell v. Pub. Utils. Comm'n*, 692 P.2d 1085, 1089 (Colo. 1984).

while also recognizing the Company's currently pending DSM strategic issues proceeding stands to significantly reshape the Company's future DSM, demand response, and beneficial electrification programming. The Settling Parties maintain the 2023 Plan, as modified by the Settlement Agreement, complies with recent legislative changes including incorporation of a BE Plan. Finally, the Settling Parties contend the 2023 Plan, as modified by the Settlement Agreement, promotes equity and environmental justice considerations in support of the Colorado legislature's directives to the Commission under House Bill 21-1266 and addresses the potential impacts on this 2023 Plan of the federal Inflation Reduction Act and Infrastructure Investment and Jobs Act.

71. Based upon substantial evidence in the record, the Commission finds approval of the Settlement Agreement is in the public interest. The Commission finds the Settling Parties have established by a preponderance of the evidence that the Settlement Agreement is just, is reasonable, and should be accepted by the Commission. We therefore approve the Settlement Agreement, without modification.

2. Grant of Application

72. The statutory and regulatory requirements under which the Commission considers Public Service's 2023 DSM & BE Plan are codified primarily at §§ 40-1-102, 40-3.2-103, 40-3.2-104, 40-3.2-106, 40-3.2-107, 40-3.2-109, C.R.S., including the legislative changes enacted in Senate Bill 21-246, effective September 7, 2021, and in the Commission's Rules Regulating Gas Utilities, 4 CCR 723-4.

73. We find that approval of Public Service's 2023 DSM & BE Plan, as modified by the Settlement Agreement, is in the public interest. We therefore grant the Application, with the modifications agreed to in the Settlement Agreement.

3. Continuation of Existing 2021-22 DSM Plan

74. We find good cause to grant the Motion for Extension. As contemplated in the parties' initial proposed procedural schedule, which the Commission adopted in Decision No. C22-0547-I, issued September 15, 2022, and the modified procedural schedule adopted in Decision No. C22-0778-I, issued December 1, 2022, the Commission's adjudication of the Application to approve the Company's 2023 Plan has continued into 2023, warranting extension of the Company's prior 2021-22 DSM Plan. Public Service reasonably explains in the Motion for Extension that authorizing extension of its 2021-22 DSM Plan until the 2023 Plan goes into effect will provide customers with continuity in programming, while promoting administrative efficiency. Public Service also appropriately notes that granting this type of extension is consistent with past practice including prior DSM proceedings. In Section VI of the Settlement Agreement, the Settling Parties support the Motion for Extension. For these reasons, we grant the Motion for Extension.

4. Rule Waivers

75. We find good cause to grant the request for waiver of Rule 4753(k) so that the Company may surpass the spending cap in this rule. Public Service reasonably explains in the Motion for Variance that an increased natural gas budget will allow the Company to maintain and build on its expanded natural gas portfolio to include more ambitious savings targets and enable customers to pursue more aggressive carbon reductions than would otherwise be possible under the budget cap. As Public Service points out, the Commission previously granted a variance from Rule 4753(k) in the Company's 2021-22 DSM Plan, finding the increased natural gas DSM

budgets and savings goals were reasonable and in the public interest.¹² In Section VII of the Settlement Agreement, the Settling Parties support the Motion for Variance. We agree with the Settling Parties that waiver is appropriate in this circumstance to accommodate the Company's proposed \$25.1 million natural gas energy efficiency budget and to ensure the Company can continue to increase natural gas energy efficiency savings and assist its natural gas customers with reducing their CO₂ emissions. We therefore waive Rule 4753(k) as requested in the Motion for Variance for the duration of the 2023 DSM & BE Plan.

76. We also find good cause to grant the request for waiver of Rule 4756(b), regarding fuel-switching. Public Service reasonably explains in the Motion for Variance that this waiver is needed to enable the Company to implement the BE proposals set forth in its Plan. As Public Service explains, its BE offerings are designed in a manner that will enable customers to switch their natural gas consumption to electricity usage. Public Service states, however, that because it has not yet reached its 100 percent clean energy goal, there is potential that a portion of the electricity used to supply customers switching from natural gas to electric usage as part of its BE offerings and incentives may still be derived from fossil fuel sources, which is inconsistent with Rule 4756(b). In Section VII of the Settlement Agreement, the Settling Parties support the Motion for Variance. We agree with the Settling Parties that waiver is appropriate in this circumstance to continue the Company's BE offerings. We therefore waive Rule 4756(b) as requested in the Motion for Variance for the duration of the 2023 DSM & BE Plan.¹³

¹² Motion for Variance at p. 4 (citing Proceeding No. 20A-0287EG, Decision No. R21-0081, at ¶¶ 48-49 (mailed Feb. 12, 2021)).

¹³ The Commission acknowledges this prior rule was eliminated by the rule amendments adopted in rulemaking Proceeding No. 21R-0449G.

5. Issuance of Directives to Increase Competition for DSM Services

77. We appreciate Iconergy's participation in this Proceeding and bringing to our attention concerns it believes exist in some of Public Service DSM program offerings, especially those in which the utility partners with third parties to provide services. Based on Iconergy's testimony and briefing in this Proceeding, and giving due consideration to the Company's response, we are persuaded that improvements can be made to how these programs are delivered to ensure that qualified vendors can participate without artificial barriers. We are also mindful, however, that it is the utility who is ultimately responsible for delivering the DSM programs, thus warranting some guardrails around this process. In general, we find Public Service's DSM programs could benefit from greater transparency, a more regular cadence of bidder selection RFPs, somewhat closer regulatory and third-party oversight, and improved information sharing mechanisms. Considering the policy arguments and evidence put forth in this Proceeding by the various parties, we find good cause to issue certain general directives to Public Service, set forth below, that we expect will increase competition for services related to the Company's DSM programs.

78. First, we direct Public Service to provide blind evaluation (or third-party independent evaluator oversight) of bids to determine qualification of vendors. Public Service principally agreed to this process change at hearing. We also require that Public Service afford bidders a mechanism to appeal the Company's determination as to their qualifications to the Commission or its staff.

79. Second, we direct Public Service to create a publicly accessible website through which procurements of third-party services are managed, third parties are notified of open

opportunities, the schedule and requirements are clearly communicated, and evaluation criteria for submitted bids are provided.

80. Third, we direct Public Service to issue an RFP prior to the filing of any application for approval of a multi-year DSM or BE plan that would increase the role of third-party partnerships in implementing its business program. The intent of this requirement is to substantially expand the number of third parties eligible to provide rebate-eligible upstream services such as engineering and energy modeling.

6. Denial of Legal Claims

81. Our determination to issue the general directives set forth above is based on the policy positions put forth by Iconergy rather than its legal arguments. We find Iconergy's legal positions in this record unpersuasive and will not adopt them including, specifically, the positions that: (1) by definition, a public utility's *provision of* electricity is regulated by the Commission and not its efforts *to not provide* electricity, and that (2) when providing DSM services using DSMCA rider dollars, Public Service has an unfair competitive advantage in contravention of the mandate in § 40-3-114, C.R.S., that, "The commission shall ensure that regulated electric and gas utilities do not use ratepayer funds to subsidize non-regulated activities."

82. We find it inaccurate to describe Public Service's DSM activities as only an act of *not* providing electricity. We recognize that DSM is, in substance, a utility resource used to benefit the overall system and the utility's customers by managing demand, promoting system reliability, avoiding the cost of building new infrastructure and capacity, and related means. We therefore find Public Service uses DSM as a resource closely tied to its provision of electricity. Further, as Public Service argued, the need and benefit of utility efforts to manage demand in this

way is codified in state law—thus Public Service is required by statute to offer DSM programs to its customers and must seek Commission approval prior to the implementation of its DSM programs and services.¹⁴

83. We also deny Iconergy’s claim that Public Service’s use of ratepayer dollars for DSM services contravenes the mandate in § 40-3-114, C.R.S., that the Commission ensure regulated utilities do not use ratepayer funds to subsidize non-regulated activities. As discussed above, Public Service uses DSM to the benefit of the overall utility system and the customers using that system. The benefits of Public Service’s DSM measures accrue to non-participating as well as participating customers through overall system benefits, for example, by deferring costly distribution system upgrades. Thus, we find Iconergy has not demonstrated on this record that the Company’s use of ratepayer funds for DSM measures conflicts with § 40-3-114, C.R.S.

84. We find persuasive Public Service’s response that Iconergy narrowly focuses on Iconergy’s business model and customer relationships and disregards the broader public interest obligations that Public Service must adhere to in determining which third-party vendors the utility does business with.¹⁵ As Public Service underscored, while it may engage third parties to help execute its programming, the utility alone bears the burden of carrying out its DSM programming in a reasonable and prudent manner on behalf of its customers.¹⁶ We agree with Public Service that Iconergy’s arguments fail to account for these public interest obligations and how they underlie the utility’s activities in this area.

¹⁴ Hr. Exh. 106, Mark Rebuttal Testimony at 11:13-16.

¹⁵ Hr. Exh. 106, Mark Rebuttal Testimony at 10:4-6.

¹⁶ Hr. Exh. 106, Mark Rebuttal Testimony at 11:16-19.

85. In sum, we recognize both the importance of ensuring that ratepayer-funded DSM services are provided in as fair and transparent a way as possible, and that Public Service's DSM activities are a critical component of the utility's overall provision of electricity. We appreciate Iconergy engaging here to bring forth issues with program delivery that could be improved for the likely benefit of both service providers and end use customers, but we see the issues more as shortcomings in the delivery of a program than potentially prohibited actions of Public Service.

7. Authorization of Compliance Tariffs

86. The Commission finds good cause to authorize Public Service to implement the changes in its electric and gas DSMCA rates in order to recover the approved gas and electric budgets as set forth in Section I of the Settlement Agreement. We therefore order Public Service to file revised tariff sheets to recover the pro-rata portion of these budgets on not less than two days' notice. Public Service is required to meet with and coordinate with Staff prior to its tariff filing in order to provide Staff with the pertinent information it will require to review the proposed tariffs.

II. ORDER

A. It Is Ordered That:

1. The Joint Motion to Approve Comprehensive Settlement Agreement, filed by Public Service Company of Colorado (Public Service) on December 2, 2022 (Settlement Agreement), is granted.

2. The Settlement Agreement attached and incorporated into this Decision as Attachment A, is approved.

3. The Application for Approval of its 2023 Electric and Natural Gas Demand-Side Management and Beneficial Electrification Plan (2023 DSM & BE Plan or Plan), filed by Public Service on July 1, 2022, as modified by the Settlement Agreement, is granted.

4. The Motion for Extension of its 2021-2022 Demand-Side Management Plan, filed by Public Service on July 1, 2022, is granted.

5. The Motion for Variance of Rules 4753(k) and 4756(b), filed by Public Service on July 1, 2022, is granted.

6. Public Service shall file a compliance advice letter to implement the tariffs necessary to implement the approved 2023 DSM & BE Plan, consistent with our findings, conclusions, and directives in this Decision. Public Service shall file the compliance modified tariff sheets in a separate proceeding and on not less than two business days' notice. The advice letter and tariff sheets shall be filed as a new advice letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The advice letter and tariff must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice.

7. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

8. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATION MEETING AND
COMMISSIONERS' WEEKLY MEETING
May 11, 2023, and May 17, 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