

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0345E

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.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
POSING QUESTIONS REGARDING SETTLEMENT,
WAIVING RESPONSE TIME AND VACATING HEARING**

Mailed Date: February 17, 2023

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. The Colorado Office of Utility Consumer Advocate (UCA) and the Trial Staff of the Colorado Public Utilities Commission (Staff) filed interventions as of right. The Colorado

Independent Energy Association (CIEA) moved to permissively intervene in this Proceeding, which was granted by Decision No. R22-0688-I, issued November 7, 2022.

3. Public Service, Commission Trial Staff, the UCA, and the CIEA are thus the parties to this Proceeding.

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

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

II. UNOPPOSED MOTION TO APPROVE SETTLEMENT AGREEMENT

6. On February 9, 2023, Public Service filed an Unopposed Motion to Approve Unopposed Comprehensive Settlement Agreement and Recommended Hearing Procedures, and Request for Waiver of Response Time (Unopposed Motion). In the Unopposed Motion, the Company advises that the parties to this Proceeding have reached an Unopposed Comprehensive Settlement Agreement (Settlement Agreement). Public Service requests that the undersigned ALJ approve the Settlement Agreement, waive any response time to the Unopposed Motion, and enter an order outlining a setting a procedure by which the parties can address any issues or questions the ALJ may have about the Settlement Agreement.

7. A copy of the Unopposed Comprehensive Settlement Agreement is attached to Public Service's Unopposed Motion. The Settlement Agreement has been signed by representatives of Public Service, Trial Staff, and the UCA, and approved as to form by counsel for Public Service and Trial Staff (Settling Parties). Although CIEA did not sign the Settlement

Agreement, in its Unopposed Motion Public Service represents that CIEA does not oppose the Unopposed Motion and, thus, does not oppose the Settlement Agreement.

8. The Unopposed Motion summarizes the actions Public Service has agreed to take under the terms of the Settlement Agreement:

- (1) A one-time credit of \$2 million associated with Rush Creek Wind Project operations in 2021, as explained in the Settlement Agreement.
- (2) A holistic prudence review process for the Cabin Creek Upgrade Project and advancement of \$5 million in expected liquidated damages associated with the work at Cabin Creek.
- (3) A one-time credit to customers of approximately \$178,485 associated with the performance of certain Company-owned income-qualified community solar gardens in 2021.
- (4) Monthly Comanche 3 reporting as described in the Settlement Agreement.
- (5) Enhanced and additional quarterly ECA reporting as described in the Settlement Agreement.
- (6) Additional Cheyenne Ridge Wind Project reporting in the Company's Customer Protection Mechanism Annual Reports in Proceeding No. 18A-0905E.

9. Public Service acknowledges in its Unopposed Motion that the undersigned ALJ may have questions regarding the terms of the Settlement Agreement which must be addressed if the Settlement Agreement is to be approved. Public Service indicates that the Settling Parties will make available the Company's Regional Vice President, Regulatory Policy, Jack Ihle, Erin O'Neill, the Commission's Chief Economist, and Chris Neil, a Rate/Financial Analyst with the UCA, at a hearing at which the ALJ can pose questions concerning the Settlement Agreement. Alternatively, Public Service indicates that the Settling Parties "have no objection to vacating both days of hearing and/or providing written answers to questions set forth in a decision by the ALJ in lieu of a hearing."¹

¹ Unopposed Motion, ¶ 17.

10. The ALJ has reviewed the Settlement Agreement, the Advice Letter, and the Direct and Answer Testimony.

11. Based on this review, the ALJ finds that a hearing to answer questions about the Settlement Agreement is not necessary at this time.

12. However, the ALJ finds that it is in the public interest for the Settling Parties to clarify certain terms included in the Settlement Agreement. Therefore, the ALJ will order the Settling Parties to file, on or before **February 24, 2023**, written responses to the questions posed in this Order. Should the Settling Parties determine that amending the Settlement Agreement will respond to the ALJ's questions, the Settling Parties may file, on or before February 24, 2023, an Amended Settlement Agreement in lieu of, or in addition to, providing written responses to the questions posed.

13. For ease of reference the ALJ will pose questions based on where the provisions appear in the Settlement Agreement. The order in which the questions are posed does not indicate or reflect the relative importance of the questions.

14. The Settling Parties are directed to respond to the following questions:

- a) Settlement Agreement at ¶ 4 indicates that “the Company will advance \$5 million in anticipated liquidated damages associated with the work and upgrade project at Cabin Creek . . . to customers.” To whom or which customers will the anticipated liquidated damages be disbursed and by what means will the Company pay the liquidated damages to the designated customers?
- b) Settlement Agreement at ¶ 5 states that “the Company will make a one-time credit to customers of approximately \$178,485 associated with the performance of certain Company-owned [Income-Qualified Community Solar Gardens] in 2021.” To whom or which customers will the credit of \$178,485 be issued; how or by what means will the credit be issued; and when will the credit be issued?

15. It may be the Settling Parties' opinion that some of the ALJ's questions are not relevant either to this Proceeding or to the review of the Settlement Agreement. The Settling Parties nonetheless shall respond to the ALJ's questions. If the Settling Parties believe that a question is not relevant, the Parties may explain the basis for that belief or opinion in their responses.

16. If, after considering the ALJ's questions, the Settling Parties believe that written responses will not allow them to respond adequately to the ALJ's questions, the Settling Parties may request an evidentiary hearing in order to present testimony in support of the Settlement Agreement and to respond to the ALJ's questions.

17. If the ALJ has additional or unresolved questions about the Settlement Agreement after receiving and reviewing the Settling Parties' responses to the questions posed above, the ALJ may hold an evidentiary hearing in order to ensure that the ALJ understands the Settlement Agreement.

III. VACATING HEARING

18. In light of the parties' settlement and the ALJ's determination that a hearing is not necessary at this time to explain the Settlement Agreement, the ALJ will vacate the evidentiary hearing scheduled for February 22 – 23, 2023.

IV. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, on or before February 24, 2023, Public Service Company of Colorado, Trial Staff, and the Office of the Utilities Consumer Advocate (the Settling Parties) shall file written responses to the questions posed in this Order.

2. The evidentiary hearing scheduled for February 22 – 23, 2023, is vacated.
3. This Decision is effective immediately.

(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 black ink, appearing to read 'G. Harris Adams'.

G. Harris Adams,
Interim Director