

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

PROCEEDING NO. 23A-0589EG

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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 YEARS 2024-2026.

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**COMMISSION DECISION APPROVING SETTLEMENT AGREEMENT WITH ADDITIONAL COMMISSION GUIDANCE; GRANTING APPLICATION AS MODIFIED BY SETTLEMENT AGREEMENT; AND ORDERING COMPLIANCE FILINGS**

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Issued Date: September 18, 2024

Adopted Date: September 11, 2024

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**I. BY THE COMMISSION**

**A. Statement**

1. This Decision grants the Unopposed Motion to Approve Comprehensive Settlement Agreement and Request for Waiver of Response Time filed May 30, 2024 (“Motion”); approves the Unopposed Comprehensive Settlement Agreement filed May 30, 2024 (“Settlement Agreement” or “Agreement”); and approves Public Service Company of Colorado’s (“Public Service” or the “Company”) above-captioned Application (“Application”) as modified by the Agreement and this Decision.

**B. Background and Discussion**

**1. Procedural History<sup>1</sup>**

2. On December 1, 2023, Public Service submitted the above-captioned Application with testimony and attachments. The Application asks the Commission to approve the Company’s

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<sup>1</sup> Only the procedural history necessary to understand this Decision is included.

combined electric and natural gas 2024-2026 Demand-Side Management (“DSM”) and Beneficial Electrification (“BE”) Plan (“DSM and BE Plan,” or the “Plan”).

3. On January 23, 2024, the Commission referred this matter for disposition to an Administrative Law Judge (“ALJ”).<sup>2</sup>

4. On February 12, 2024, the ALJ established procedural deadlines and scheduled a five-day fully remote evidentiary hearing starting on May 13, 2024.<sup>3</sup> At the same time, the ALJ extended the statutory deadline for a final Commission decision to September 24, 2024, per § 40-6-109.5(1), C.R.S., and granted the Company’s request to extend its current combined 2023 DSM and BE Plan that was approved in Proceeding No. 22A-0315EG (“2023 Plan”) until the Plan in this Proceeding becomes effective.<sup>4</sup>

5. In addition to the Company, the following entities are parties to this Proceeding: the Colorado Public Utilities Commission Trial Staff (“Staff”); the Colorado Energy Office (“CEO”); the Colorado Office of the Utility Consumer Advocate (“UCA”); the City of Boulder (“Boulder”); Western Resource Advocates (“WRA”); Natural Resources Defense Council and the Sierra Club (collectively, “the Conservation Coalition”); Southwest Energy Efficiency Projects (“SWEEP”); the City and County of Denver (“Denver”); Energy Outreach Colorado (“EOC”); Energy Efficiency Business Coalition (“EEBC”); Clean Energy Economy for the Region (“CLEER”); Climax Molybdenum Company (“Climax”); Colorado Energy Consumers (“CEC”), and Iconergy LTD., (“Iconergy”).<sup>5</sup>

6. The parties filed voluminous written testimony and other exhibits consistent with established deadlines.

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<sup>2</sup> Decision No. C24-0054-I (mailed January 23, 2024).

<sup>3</sup> Decision No. R24-0086-I at ¶¶ 22-29 (mailed February 12, 2024).

<sup>4</sup> Decision No. R24-0086-I at ¶¶ 10-14; 22-23.

<sup>5</sup> Decision No. R24-0086-I at ¶ 23 (mailed February 12, 2024).

7. Throughout the course of this Proceeding, members of the public have submitted public comments.

8. The ALJ convened the evidentiary hearing on May 13, 2024, as noticed. All parties appeared. By Decision No. R24-0330-I, the ALJ memorialized what occurred during the May 13, 2024 hearing.<sup>6</sup> As relevant here, the ALJ vacated the May 14, 15, and 16, 2024 hearing dates; maintained the May 17, 2024 hearing date; provided notice that during the May 17, 2024 hearing, the ALJ will hear from the parties as to whether extraordinary conditions exist to warrant extending the deadline for a final Commission decision to issue per § 40-6-109.5(4), C.R.S.; and directed the parties to make their best efforts to address the Commission's guidance from the Company's Clean Heat Plan Proceeding No. 23A-0392EG ("Clean Heat Proceeding") through live direct and cross examination testimony, or through a settlement agreement (as applicable).<sup>7</sup> During the May 13, 2024 hearing, the parties expressed interest in exploring settlement.

9. The ALJ held the May 17, 2024 hearing as noticed, all parties appeared. During the hearing, the parties indicated that they reached a comprehensive settlement in principle and that except for Iconergy and possibly CEC, all parties anticipated being signatories to the settlement agreement.<sup>8</sup> As such, during the hearing, the ALJ scheduled a remote hearing on the anticipated settlement agreement for July 15 and 16, 2024; established deadlines relating to that hearing; determined that extraordinary conditions exist to warrant extending the deadline for a final Commission decision to issue per § 40-6-109.5(4), C.R.S.; and extended the deadline for a final Commission decision by 130 days to February 3, 2025.<sup>9</sup>

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<sup>6</sup> Decision No. R24-0330-I (mailed May 14, 2024).

<sup>7</sup> *Id.* at 6-7.

<sup>8</sup> *See* Decision No. R24-0347-I at ¶ 3 (mailed May 23, 2024).

<sup>9</sup> *Id.* at 6-7.

10. On May 30, 2024, the Company filed an Unopposed Motion to Approve Comprehensive Settlement Agreement and Request for Waiver of Response Time (“Motion”), an Unopposed Comprehensive Settlement Agreement (“Settlement Agreement” or “Agreement”), and a non-executable and executable attachment to the Agreement. Public Service, Staff, the UCA, CEO, Boulder, Denver, WRA, the Conservation Coalition, SWEEP, EOC, EEBC, CLEER, Climax, and CEC (Settling Parties) are signatories to the Settlement Agreement.<sup>10</sup> Iconergy takes no position on the Agreement.<sup>11</sup>

11. On June 27, 2024, by Decision No. R24-0465-I, the ALJ ordered the Company to make a filing by July 8, 2024 addressing identified questions relating to the Settlement Agreement (“required filing”); to confer with the Settling Parties as to whether they agree that the information in the required filing is consistent with the Settlement Agreement; and report the results of that conferral in the required filing.<sup>12</sup> The Decision requires that the Company to file a motion by July 8, 2024 if it requires more time to make the required filing.<sup>13</sup> The Decision advises that if the Company files a motion seeking additional time, that the July 15 and 16, 2024 hearing dates will automatically be vacated, and that the ALJ will establish a new deadline for the required filing and new hearing dates by a separate Decision.<sup>14</sup>

12. On July 3, 2024, the Company filed a Notice of Conferral and Unopposed Motion for Additional Time to Make Supplemental Filing and Request for Waiver of Response Time (“Motion for Additional Time”) seeking additional time to make the required filing and proposing a new hearing date.

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<sup>10</sup> Hearing Exhibit 143 at 3.

<sup>11</sup> Hearing Exhibit 143 at 3.

<sup>12</sup> Decision No. R24-0465-I at ¶¶ 3-6 (mailed June 27, 2024).

<sup>13</sup> *Id.* at 6.

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

13. On July 16, 2024, by Decision No. R24-0508-I, the ALJ partially granted the Motion for Additional Time; confirmed that the July 15, and 16, 2024 hearing was automatically vacated by operation of Decision No. R24-0465-I; scheduled a remote evidentiary hearing on the Settlement Agreement for August 8, 2024; established a July 25, 2024 deadline for Public Service to make the required filing and a July 31, 2024 deadline for the Settling Parties to file settlement testimony as outlined in the Decision; and modified and established other deadlines and procedures relating to the hearing.<sup>15</sup> The Decision provides that if conferring with the Settling Parties on the Company's required filing prevents the Company from meeting the July 25, 2024 deadline, the Company may make its filing without incorporating all Settling Parties' positions on it.<sup>16</sup> The Decision states any Settling Party whose position is not reflected in the Company's required filing must file settlement testimony on or by August 1, 2024 clearly stating their position on the Company's required filing, including whether it accurately reflects the Agreement's terms.<sup>17</sup> The Decision advises the parties that they may provide live direct examination testimony addressing or supplementing anything in the Company's required filing or settlement testimony, and that any party wishing to do so must provide notice of their intent to do so by identifying an estimated amount of time for direct examination in the Joint Witness Examination Matrix ("Matrix") due on August 5, 2024.<sup>18</sup>

14. On July 25, 2024, Public Service filed its Notice of Conferral and Filing of Settlement Testimony and Supplemental Information ("Conferral Notice"); and the required filing through numerous new exhibits (Hearing Exhibits 144 and 145 with attachments).

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<sup>15</sup> Decision No. R24-0508-I at ¶ 4-8 (mailed July 16, 2024).

<sup>16</sup> *Id.* at 5. The Decision notes that the required filing should accurately reflect many Settlement Agreement terms, which is why it is important for the record to clearly indicate the Settling Parties' position on it. *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 5-6, 8.

15. The Conferral Notice provides the results of the Company's efforts to confer with the Settling parties on the required filing.<sup>19</sup> None of the Settling Parties indicated that the Company's filings are inconsistent with the Settlement Agreement, though several noted that they could not take a position on everything the Company submitted because the Company did not make everything available to them for review.<sup>20</sup>

16. Other than Public Service's Settlement Testimony (Hearing Exhibits 144 and 145), no party filed settlement testimony.

17. On August 2, 2024, via their Settlement Hearing Joint Witness Examination Matrix ("Joint Matrix") and the Notice of Conferral and Filing of Joint Witness Examination Matrix ("Notice"), the parties indicated that none of them intend to provide live direct examination testimony addressing or supplementing anything in the Company's required filing or to cross examine any witness during the scheduled hearing.<sup>21</sup>

18. The ALJ held the evidentiary hearing as noticed on August 8, 2024. All parties appeared.<sup>22</sup> The following witnesses testified: Messrs. Nick Mark and Mark Schoenheider (for the Company); Mr. Chris Neil (for the UCA); and Mr. Eric Haglund (for Staff). Before beginning the evidentiary portion of the hearing, the ALJ advised the Settling Parties that if they disagree with any clarifications to the Settlement agreement made during the hearing, must clearly indicate this during the hearing.<sup>23</sup>

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<sup>19</sup> Conferral Notice at 5-8.

<sup>20</sup> *Id.*

<sup>21</sup> Joint Matrix; Notice at 1.

<sup>22</sup> Although Iconergy appeared, it asked to be excused from staying for the entire hearing as it did not plan to examine any witnesses or otherwise present evidence. August 8, 2024 Tr., 18: 11-15. The ALJ excused Iconergy, noting that Iconergy leaves the hearing at its own risk. August 8, 2024 Tr., 18: 16-17.

<sup>23</sup> August 8, 2024 Tr., 18: 21-25—19: 1-9. To the extent that witness testimony clarified the Settlement Agreement, no Settling Party indicated during the hearing or after that they disagree with such clarifications.

19. Also on August 8, 2024, the Company entered a document indicating that its DSM business programs experienced higher than expected participation and expenditure (“Initial Budgetary Pressure Notice” or “Initial Notice”) and that Public Service paused processing of applications until it could “work with stakeholders on potential alternatives to address the budgetary constraints.”<sup>24</sup> That document was formally filed in Proceeding No. 22A-0315EG. On the date, EEBC and SWEEP also entered a document in the instant Proceeding’s record, a Petition for Declaratory Order and Motion for an Injunction.<sup>25</sup> Both documents were also formally filed in Proceeding No. 22A-0315EG.

20. The following Hearing Exhibits and the most recent versions of their associated attachments (including confidential, highly confidential and executable attachments and exhibits) were admitted into evidence during the hearing: 100 to 147;<sup>26</sup> 300 to 301; 400; 500 to 501; 600 to 601; 700 to 702; 800 to 803; 900; 1000 to 1006; 1100; 1200 to 1201;<sup>27</sup> 1300 to 1302; 1500 to 1503; and Hearing Exhibit 1700.<sup>28</sup>

21. On August 22, 2024, the Conservation Coalition and SWEEP filed a Statement of Position (“SOP”) (“Joint SOP”). That same day, Public Service filed its SOP (“Public Service’s SOP”).

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<sup>24</sup> Hearing Exhibit 147 at 1-2.

<sup>25</sup> Hearing Exhibit 1201.

<sup>26</sup> Hearing Exhibit 145, Attachments MRS-8 and MRS-9 were filed as executable documents, but are not marked as executable exhibits, contrary to procedural directives in this Proceeding. August 8, 2024 Tr., 91: 1-25—92: 1-21.

<sup>27</sup> Hearing Exhibit 1201 is EEBC’s and SWEEP’s Response to Public Service’s Notice, Petition for Declaratory Order, and Motion for Preliminary Injunction (“Response” or “Hearing Exhibit 1201”) in Proceeding No. 22A-0315EG, (the “2023 Plan”).

<sup>28</sup> Hearing Exhibit 1700 is a pdf list of pre-filed exhibits that the parties indicated they may offer into evidence during the hearing. Several admitted exhibits are identified as revisions to prior versions of the exhibits (*i.e.*, as “Rev. 1”). For ease of reference, this Decision does not include “Rev.1” or other similar iteration when citing such exhibits.

22. Through Decision No. C24-0650, issued on September 10, 2024, the Commission rescinded the referral of this Proceeding pursuant to § 40-6-109(2), C.R.S. The Commission did so in order to address expeditiously certain ongoing issues with the Company's current DSM efforts that were raised in Proceeding No. 22A-0315EG. In Decision No. C24-0652, issued in Proceeding No. 22A-0315EG on September 10, 2024, the Commission found that this Proceeding was a more appropriate forum to address the Company's 2024 budget shortfall and that by rescinding the referral, the Commission could more expeditiously towards resolution of the ongoing concerns.

23. The Commission conducted live deliberations in this Proceeding at a Commissioners' Weekly Meeting on September 11, 2024, resulting in this Decision.

## **2. Strategic Issues Governing 2024-2026 Plan**

24. Since approximately 2010, the Company has set electric DSM program goals through electric DSM strategic issues proceedings which cover approximately four-year intervals, with intervening DSM plan filings pursuant to § 40-3.2-104(2)(a), C.R.S. For gas DSM, pursuant to § 40-3.2-103(1), C.R.S., commencing in 2022 and at least every four years, Public Service must also file an application to open a gas DSM strategic issues proceeding to develop energy savings targets to be achieved by the utility, taking into account its potential for cost-effective DSM as well as statewide greenhouse gas emission goals. As a part of approving a DSM strategic issues application, the Commission must develop an estimated DSM budget commensurate with natural gas savings targets, funding and cost-recovery mechanisms, and a bonus structure for implemented DSM programs.<sup>29</sup> Section 40-3.2-109(6)(a), C.R.S., also requires electric utilities to file their first BE strategic issues filing by April 1, 2024.

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<sup>29</sup> § 40-3.2-103(1), C.R.S.

25. In Proceeding No. 22A-0309EG, the Company satisfied each of the above statutory requirements by filing a combined gas EE, electric EE, and BE SI Application. In the Company’s Application for Approval of Strategic Issues relating to its electric and gas DSM and BE Plan in Proceeding No. 22A-0309EG (“SI Proceeding”), the Commission established requirements relating to the Plan here.<sup>30</sup> Specifically, by Decision No. C23-0413 in the SI Proceeding (“SI Decision”), the Commission established 2024-2026 budgets and energy and peak demand reduction savings targets for this Plan and ordered the Company to include certain items or issues in the DSM and BE plan filing here.<sup>31</sup> As a part of that, the Commission approved the following budgets and energy savings goals:<sup>32</sup>

Portfolio	2024			2025			2026		
	Base Budget	Maximum Budget with Budget Flexibility	Energy Savings Targets	Base Budget	Maximum Budget With Budget Flexibility	Energy Savings Targets	Base Budget	Maximum Budget with Budget Flexibility	Energy Savings Targets
Electric EE	\$78M	\$93.6M	440 GWh	\$78M	\$93.6M	440 GWh	\$78M	\$93.6M	440 GWh
Gas EE <sup>33</sup>	\$18M	\$22.5M	814,000 Dth	\$18M	\$22.5M	860,000 Dth	\$18M	\$22.5M	903,000 Dth
BE	\$9.5M	\$11.4M	257,000 Dth	\$21M	\$25.2M	622,000 Dth	\$37M	\$44.4M	1,143,000 Dth
<b>Budget and Energy Savings Totals</b>	\$105.5 M	\$127.5M	440 GWh 1.07M Dth	\$117M	\$141.3M	440 GWh 1.482M Dth	\$133M	\$160.5M <sup>34</sup>	440 GWh 2.046M Dth

26. In an acknowledgement to a need to meet the market and avoid the false precision of exact annual budgets, the Commission expressed that “[w]hile this has been expressed by the

<sup>30</sup> Decision Nos. C23-0413 (June 22, 2023) (Hearing Exhibit 133) and C23-0523 (August 8, 2023) in Proceeding No. 22A-0309EG (hereinafter cited without Proceeding No. 22A-0309EG). See Hearing Exhibit 100 at 5.

<sup>31</sup> Decision No. C23-0413, ¶¶ 35-36, 52-53, 62-63; Hearing Exhibit 133 at 13, 19-20, 23. See the Company’s SOP at 9.

<sup>32</sup> Decision No. C23-0413, ¶¶ 35-36, 52-53, 62-63; Hearing Exhibit 133 at 13, 19-20, 23.

<sup>33</sup> The Commission approved 25 percent budget flexibility for gas EE, whereas it approved 20 percent budget flexibility for both electric EE and BE. Decision No. C23-0413, ¶¶ 35-36, 52-53, 62-63; Hearing Exhibit 133 at 13, 19-20, 23.

<sup>34</sup> Decision No. C23-0413, ¶¶ 35-36, 52-53, 62-63; Hearing Exhibit 133 at 13, 19-20, 23. The following meanings apply to the abbreviations in this table: “M” means million; “GWh” means gigawatt hour; “Dth” means dekatherm.

Commission as a series of annual goals with flat annual spending, nothing here should prevent the Company from presenting plans with some reasonable variation from year to year, achieving the annual goals established herein on an average basis over the SI period.”<sup>35</sup>

27. Once a DSM strategic issues proceeding is complete, the gas utility must develop gas DSM program plans to meet or exceed the Commission-approved energy savings targets.<sup>36</sup> Public Service implements electric and gas DSM programs pursuant to §§ 40-1-102, 40-3.2-103, 40-3.2-104, 40-3.2-105.5, 40-3.2-105.6, 40-3.2-106, and 40-3.2-107, C.R.S., and beneficial electrification programs pursuant to § 40-3.2-109, C.R.S. Also under § 40-3.2-109(2)(b), C.R.S., electric utilities are required to file with the Commission their first BE plan by July 1, 2022, and at least every three years thereafter.

28. The Company’s 2023 DSM and BE Plan addressed in Proceeding No. 22A-0315EG (“2023 Plan”) is also relevant to the instant proceeding.<sup>37</sup> As noted above, the Company’s 2023 Plan was extended until the Plan in this Proceeding becomes effective.<sup>38</sup>

29. The Commission’s Decisions in the Company’s Clean Heat Proceeding (Proceeding No. 23A-0392EG) is also relevant to this Proceeding.<sup>39</sup> On June 10, 2024, the Commission issued a decision in the Clean Heat Proceeding that approved a clean heat plan for the Company for 2024-2027. The Commission determined that the implementation of the 2024-2027 Clean Heat Plan would occur through a stakeholder process that aligns the Clean Heat

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<sup>35</sup> Decision C23-0413, at ¶ 34.

<sup>36</sup> § 40-3.2-103(3)(a)(I), C.R.S.

<sup>37</sup> Decision Nos. C23-0381 (June 8, 2023) and C23-0490 (July 26, 2023) in Proceeding No. 22A-0315EG (hereinafter cited without Proceeding No. 22A-0315EG). *See* Hearing Exhibit 100 at 5; Hearing Exhibit 101, 10: 7-19, citing Decision Nos. C23-0381 and C23-0490.

<sup>38</sup> Decision No. R24-0086-I at ¶¶ 13-14; 23.

<sup>39</sup> Pursuant to § 40-3.2-108(4)(a), C.R.S., Public Service filed its clean heat plan on August 1, 2023. Section 40-3.2-108(1), C.R.S., enumerates certain resources as “clean heat resources” including, as relevant here, demand side management (DSM) (as defined in § 40-1-102(6), C.R.S.) and BE (as defined in § 40-1-102(1.2), C.R.S.).

Plan Proceeding with the outcome in this Proceeding.<sup>40</sup> In that case, the Commission identified guidance for the parties to use in developing approaches to coordinate use of funding from the Clean Heat Proceeding and funding approved in the SI Proceeding as implemented through this Proceeding.<sup>41</sup>

### 3. The Company's Application

30. The 2023 Plan's electric EE portfolio targets 484 GWh of savings and includes a base budget of \$78 million with an additional 20 percent spending presumed prudent, for a total potential annual spend of \$93.6 million on electric EE.<sup>42</sup> This generally aligns with the SI Decision's budgets and savings goals.<sup>43</sup>

31. The 2024-2026 Plan application proposes first-year electric energy savings ranging from 443 – 449 GWh and first-year gas savings (for both gas efficiency and beneficial electrification) ranging from 1.1- 2.1 MMDth.<sup>44</sup> Proposed budgets were generally in line with the funds described in the Commission's Strategic Issues order including both base and flexibility budget levels. The Plan application also requested, on average, \$24.3 million of Demand Response (also referred to as Demand Management or DM) and targeted controllable load of increasing to 683 MW (summer) / 328 MW (winter) by 2026.

32. Proposed spending on business customers represents slightly over one half of the total of the electric EE budget, about one-tenth of the total gas EE budget and slightly less than

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<sup>40</sup> See Decision No. C24-0397, ¶¶ 250-255. (June 10, 2024) in Proceeding No. 23A-0392EG.

<sup>41</sup> *Id.*

<sup>42</sup> See August 8, 2024 Tr., 150: 10-14; Hearing Exhibit 147 at 4. Decision No. C23-0381, ¶ 19 (June 8, 2023), in Proceeding No. 22A-0315EG.

<sup>43</sup> See *supra* ¶ 27.

<sup>44</sup> Hearing Exh. 101, Att. NCM-1 Table 1 (pp. 5-6).

one-quarter of the total BE budget.<sup>45</sup> The remainder is targeted at residential (market-rate) and IQ customers.

33. The Plan application also covered a wide range of DSM implementation facets including but not limited to competitive acquisition of DSM resources, budget and savings levels for numerous categories of measures and initiatives, program and sub-program participation levels, projected rebates per program participant, savings calculations criteria, cost-effectiveness evaluations, projected emissions reductions, the Company’s proposed Targeted Demand Area proposal, response to recent inquiry in an on-bill financing tariff, Public Service’s proposed DM Performance Incentive Mechanism (“PIM”), Disproportionately Impacted and Income Qualified (“DI/IQ”) customer engagement, and cost recovery of Company legal expenses.<sup>46</sup>

**4. The Settlement Agreement**

34. The Settling Parties agree the Commission should approve the Company’s proposed electric EE budgets and savings targets in Hearing Exhibit 109, Table NCM-R-1,<sup>47</sup> (reproduced below), with the addition of the Commission’s approved base budget and budget flexibility, and averages across the Plan years.<sup>48</sup>

**Electric EE Budget and Savings<sup>49</sup>**

<b>Year</b>	<b>Base Spend Budget Cap</b>	<b>Approved Budget with Flexibility</b>	<b>Plan Budget</b>	<b>Capacity Savings (kW)</b>	<b>Approved Energy Savings Targets (kWh)</b>	<b>Plan Energy Savings (kWh)</b>
<b>2024</b>	\$78 M	\$93.6 M	\$91.8 M	95,882	440,000,000	445,865,492

<sup>45</sup> *Id.* at 8.

<sup>46</sup> August 8, 2024 Tr., 147: 10-24.

<sup>47</sup> Table NCM-R-1 is found at Hearing Exhibit 109, 16: 14-15.

<sup>48</sup> Hearing Exhibit 143 at 4.

<sup>49</sup> The Agreement explains that the base budget spending cap, budget flexibility, and energy savings targets in this table and in the Gas EE Budget and Savings table below, and as otherwise referenced in the Settlement Agreement, were approved by Decision No. C23-0413 in the SI Proceeding. Hearing Exhibit 143 at ¶ 4, fn. 1.

<b>2025</b>	\$78 M	\$93.6 M	\$92.6 M	95,899	440,000,000	439,931,395
<b>2026</b>	\$78 M	\$93.6 M	\$94.1 M	97,501	440,000,000	441,722,024
<b>Average</b>	\$78 M	\$93.6 M	\$92.8 M	94,427	440,000,000	442,506,304

35. The Settling Parties agree the Commission should approve the Company’s gas EE budgets and savings in Hearing Exhibit 101, Table NCM-D-5,<sup>50</sup> (reproduced below), with the addition of the Commission’s approved base budget and budget flexibility and averages across the Plan years.<sup>51</sup>

**Gas EE Budgets and Savings<sup>52</sup>**

<b>Year</b>	<b>Base Spend Budget Cap</b>	<b>Approved Budget with Flexibility</b>	<b>Plan Budget</b>	<b>Approved Energy Savings Target (Dth)</b>	<b>Plan Energy Savings (Dth)</b>
<b>2024</b>	\$18 M	\$22.5 M	\$21.7 M	814,000	817,672
<b>2025</b>	\$18 M	\$22.5 M	\$22.1 M	860,000	866,928
<b>2026</b>	\$18 M	\$22.5 M	\$22.4 M	903,000	905,111
<b>Average</b>	\$18 M	\$22.5 M	\$22.1 M	859,000	863,237

36. As to the above provisions, the Settling Parties acknowledge the Commission’s established energy and capacity savings targets, base budget caps, and budget flexibility approved in the SI Proceeding, and that may be approved in the Clean Heat Proceeding.<sup>53</sup> This is intended to recognize the overlap between this Proceeding, the SI Proceeding and the Clean Heat Proceeding, and the potential that the Commission may issue decisions in the Clean Heat Proceeding that could impact the programs and goals here.<sup>54</sup> The Agreement does not seek to and

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<sup>50</sup> Table NCM-D-5 is found at Hearing Exhibit 101, 27: 5-7.

<sup>51</sup> Hearing Exhibit 143 at 4-5.

<sup>52</sup> Hearing Exhibit 143 at 5.

<sup>53</sup> Hearing Exhibit 143 at 5.

<sup>54</sup> See August 8, 2024 Tr., 23: 1-25—24: 1-8.

does not create additional restrictions on the use of budget flexibility beyond what is stated in the 2022 SI Decision.<sup>55</sup>

37. The Agreement’s Electric and Gas EE budgets in the above tables contemplate the Company using at least some of the budget flexibility the Commission approved in the SI Proceeding. Despite this, the Agreement provides that the Company will “strive to adhere to the Commission-established caps, and may use the authorized flexibility if and to the extent necessary to meet and endeavor to exceed the Commission-established energy and capacity savings goals in a cost-effective manner.”<sup>56</sup> During the hearing, the Company explained that it does not believe that it can realistically achieve the Commission’s energy savings goals without using at least some of the budget flexibility, and that this Agreement language is intended to signal that the Company will make its best efforts to meet the goals without additional spending.<sup>57</sup> The Company reached this conclusion through in-house model referred to as the GBGB (meaning, “Great Big Great Big”).<sup>58</sup> The Company explained that it has been working with the GBGB model for at least 15 years, and that it incorporates hundreds of thousands of the Company’s projections as to customer decisions relating to Plan measures and the impact of those customer decisions on energy savings, incremental capital costs, measure lifetime, load profiles, among other things.<sup>59</sup> The Company stated that, as result of these exercises, it concluded that without offering more incentive dollars or otherwise spending additional funds to promote energy efficiency, it cannot

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<sup>55</sup> Hearing Exhibit 143 at 5.

<sup>56</sup> Hearing Exhibit 143 at 5.

<sup>57</sup> See August 8, 2024 Tr., 24: 15-25—26: 1-4.

<sup>58</sup> See August 8, 2024 Tr., 80: 12-20; 81: 6-8 (discussing the modeling document, Hearing Exhibit 145, Attachment MRS-8).

<sup>59</sup> August 8, 2024 Tr., 83: 23-25—84: 1-14. The model starts with individual customer decisions and rolls up to portfolio totals for items like forecasted spending, forecasted energy savings, and cost-effectiveness. August 8, 2024 Tr., 81: 8-12.

motivate enough customers to participate in programs at a level that would meet the Commission's energy savings' goals.<sup>60</sup>

38. The Company also explained that during the SI Proceeding, it was concerned about the budget amounts and savings goals that were being contemplated; that it argued for other goals and budgets, but since it did not know what the Commission's decision would be or how it would impact the Company's plans and programs, it was not able to raise more specific concerns relating to budgets.<sup>61</sup> The Company explained that the implications of some of the budget and savings goals really only became apparent when the Company entered the planning stage (*i.e.*, in this case).<sup>62</sup>

39. During the hearing, the ALJ questioned whether using budget flexibility upfront is necessary given that the Company spent approximately \$70 million to achieve approximately 400 GWh of savings through its electric EE portfolio in calendar year 2024.<sup>63</sup> The Company responded that it believes some of the drivers for the success it experienced implementing the 2023 Plan may not exist or may not be the same, and that this past performance is not necessarily indicative of future performance.<sup>64</sup> The Company explains that while it remains committed to not using or using as little of the flexibility budget as possible when implementing the electric EE portfolio, it maintains that recent performance shows that it will likely need to use some or all of the flexibility budget to meet established savings goals.<sup>65</sup>

40. The Settling Parties agree the Commission should approve the Company's BE budgets and savings as set forth in Hearing Exhibit 101, Table NCM-D-6,<sup>66</sup> reproduced below:

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<sup>60</sup> August 8, 2024 Tr., 40: 4-14.

<sup>61</sup> See August 8, 2024 Tr., 28: 23-25—29: 1-9.

<sup>62</sup> See 8/8/24 Tr., 28: 8-16.

<sup>63</sup> August 8, 2024 Tr., 153: 16-25.

<sup>64</sup> See August 8, 2024 Tr., 154: 12-18.

<sup>65</sup> See August 8, 2024 Tr., 154: 1-11; 154: 23-25—155: 1-3.

<sup>66</sup> Table NCM-D-6 is found at Hearing Exhibit 101, 28: 14-16.

**Be Budget And Savings<sup>67</sup>**

<b>Year</b>	<b>Budget</b>	<b>Energy Savings (Dth or Dth-equivalent)</b>	<b>Incremental Electric Use (kWh)</b>
2024	\$11.3 M	262,636	26,036,617
2025	\$24.6 M	623,055	66,093,315
2026	\$43.9 M	1,145,998	128,941,208

**5. 2024 Electric DSM Budgetary Pressures**

41. In the 2023 Plan Proceeding, the Company’s Initial Notice indicated that from January 1, 2024, through June 30, 2024, the Company has spent approximately \$70 million on electric EE, with estimated savings of 401 GWh. With the Company’s current forecasted electric EE trajectory, it could spend approximately \$115.6 million, with estimated savings of 593.5 GWh. However, because this would exceed the Commission’s authorized budget amount by approximately \$22 million, the Company took steps to cease expenditures.<sup>68</sup>

42. The Company filed a Motion to Address Electric Energy Efficiency Budgetary Pressures For Calendar Year 2024, and Request for Waiver or Variance as Necessary (“Budget Motion”) in the 2023 Plan Proceeding. In its Budget Motion, the Company requested the Commission increase the approved budget for the Company’s electric EE offerings to add an additional \$34.1 million to the 2023 electric EE Plan budget of \$92.9 million as applied to calendar year 2024. The Company stated that it reasonably expected that this preferred option would allow the Company to continue providing all of its cost-effective electric EE offerings to customers through the remainder of 2024. The Company also presented two alternative options for Commission consideration involving either approving a smaller increase in budget for 2024 or

<sup>67</sup> Hearing Exhibit 143 at 6.

<sup>68</sup> Hearing Exhibit 147 at 1-2.

direction to the Company to endeavor to manage the electric EE program without a budget increase through Company flexibility to pay out current or future rebate applications no earlier than January 1, 2025.<sup>69</sup>

43. Staff, CEC, UCA, and Climax, objected to the Company's Budget Motion.<sup>70</sup> Staff suggests Public Service's questionable management of its DSM programs is not a compelling reason justifying the imposition of additional costs onto ratepayers.<sup>71</sup> Climax contends the Commission should support the "integrity" of the settlement in 22A-0315EG as grounds to dismiss Public Service's request for more funds. If allowed, Climax argues that this tactic by the Company has significant implications for parties to negotiate settlements in good faith in all other cases, including the pending settlement of the 2024-2026 DSM/BE Plan.<sup>72</sup>

44. CEC opposes any additional spending for electric EE and poses that the Budget Motion tests the Commission's "commitment to ratepayers, to upholding its Orders, to promoting reliable negotiated settlements, and ultimately to achieving this ambitious energy transition in a balanced and sustainable manner." CEC argues that is reversal on cost containment proposed by the budget would require the Commission to inappropriately contravene its prior decision without supporting evidence, unravel the approved Comprehensive Settlement Agreement in resolution of the 2023 DSM Plan, undermine settlements generally, and raise serious questions about the justness and reasonableness of our rates. CEC argues that the Commission should approve Alternative 2 and deny any presumption of prudence for additional funding beyond the \$92.9 million authorized for Public Service's 2023 DSM Plan.<sup>73</sup>

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<sup>69</sup> See Decision No. C24-0652 at ¶ 14, mailed on September 10, 2024, in Proceeding No. 22A-0315EG.

<sup>70</sup> *Id.* at 22.

<sup>71</sup> *Id.* at 23.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 26.

45. UCA argues this problem was caused solely by Public Service due to the Company's mismanagement of these programs. UCA states that "[i]f the Commission authorizes any additional funds, those funds should be charged to the Company's shareholders alone. Ratepayers must be held harmless." UCA notes that this issue of overage was recently ruled upon by the Commission in Decision No. C24-0448 in Proceeding No. 24AL-0153E where the Commission ruled that "Public Service cannot assume it is entitled to recover costs outside of established budget requirements through the normal operation of the DSMCA."<sup>74</sup>

46. The Commission received responses in support of the Company's Budget Motion from the following: 1.) Denver; 2.) CEO; 3.) EEBC, SWEEP and WRA (collectively). These parties support the Preferred Solution, described above, or a similar solution. WRA, SWEEP and EEBC suggest that the overextended programs (Business Energy Assessment, Strategic Energy Management and Lighting Efficiency) were the most cost-effective products within the Business Program, delivering mTRC values of between 3.4 and 3.8.<sup>75</sup> They note that the "uptick" in the lighting efficiency product was driven in large part by bonus rebates that were extended as part of the 2023 DSM Plan proceeding settlement agreement. They also repeat the suggestion that the cessation of programs has thrown the energy efficiency market into turmoil, jeopardizing the long-term viability of the Company's DSM programs, although the Company has appropriately restarted its residential electric DSM programs.

47. WRA, SWEEP and EEBC suggest that waiting until 2025 for rebate payments to 2024 work will cause an enormous financial burden for EEBC members and the DSM industry.<sup>76</sup> They suggest that both of the Company's alternative options do not solve the budgetary problem

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<sup>74</sup> *Id.* at 24.

<sup>75</sup> *Id.* at 18.

<sup>76</sup> *Id.*

at hand. Instead, “they merely kick the can down the road. By delaying rebate processing until 2025, the Company would develop a large backlog of projects that would eat away at the 2025 budget and would likely lead to a similar issue next year. Instead, while approving such a large budget increase may not be desirable, it is the only solution that addresses the issue at hand and allows Public Service and the parties to move forward into next year with a clean slate, while also preserving the Company’s successful DSM programs moving forward.”<sup>77</sup>

48. WRA, SWEEP and EEBC argue that Public Service’s authorized DSM budget is not a “hard cap,” and the presumption of prudence applies with the understanding that circumstances could dictate additional budget. Nonetheless, they suggest the Commission indicate certain conditions to the additional budget: First, the Commission should make explicit that none of the incremental budget approved by the Commission should contribute toward either the goal achievement or incremental net benefits that are included in the Company performance incentive mechanism calculation. Second, the Commission should make it clear that any rebates and savings deferred until 2025 will also not count toward the Company’s 2025 performance incentive mechanism. Third, the Commission should clarify that all under-recovery on the Company’s DSMCA mechanism in 2024 do not earn any interest through a carrying charge.<sup>78</sup>

49. In its Response to the Commission’s Second Supplementary Information Request, Public Service responds to the conditions proposed by WRA, SWEEP and EEBC. With respect to the first condition (none of the incremental 2024 budget should contribute toward Performance Incentive Mechanism calculation), the Company generally agrees. With respect to the second condition proposed (any deferred rebates or savings should not count toward 2025 PIM

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<sup>77</sup> *Id.* at 6.

<sup>78</sup> *Id.* at 6-7.

calculation, the Company contends that t]here is no basis to this penalizing request<sup>79</sup> With respect to the third condition (any under-recovery on the Company's DSMCA do not earn any interest), the Company contends that no such interest expense exists under the Company's tariff for the DSMCA-E (the rider for electric customers), and thus, there is no need for a Commission condition on this interest issue.

50. As discussed in Decision No. C24-0652, issued on September 10, 2024, in Proceeding No. 22A-0315EG, the Commission denied the Company's Budget Motion. The Commission found that the instant Proceeding was a more appropriate forum to address the merits of any additional EE budget or any other appropriate solution for 2024.<sup>80</sup>

### **C. Findings and Conclusions**

#### **1. Settlement Agreement<sup>81</sup>**

##### **a. Overall**

51. As noted, Public Service, Staff, the UCA, CEO, Boulder, Denver, WRA, the Conservation Coalition, SWEEP, EOC, EEBC, CLEER, Climax, and CEC are the Settling Parties, and Iconergy takes no position on the Agreement.<sup>82</sup> As such, the Agreement is unopposed.

52. The Settlement Agreement is intended to resolve all issues raised by the Settling Parties in this Proceeding.<sup>83</sup> The Settling Parties agree that the Commission should approve the Company's DSM and BE Plan as modified through the Company's Rebuttal Testimony and the Settlement Agreement, and that if there is a conflict, the Agreement's terms prevail.<sup>84</sup>

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<sup>79</sup> Public Service Response to Second Supplementary Information Request, at 3, filed in Proceeding No. 22A-0315EG.

<sup>80</sup> *Id.*

<sup>81</sup> The Agreement includes numerous general provisions that are common in Commission settlement agreements. *See* Hearing Exhibit 143 at 24-27.

<sup>82</sup> Hearing Exhibit 143 at 3.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 3-4.

53. The Settlement Agreement includes Hearing Exhibit 143, Attachment A, referred to as Appendix 1, which is intended to provide a high-level overview outlining the estimated impact for each Agreement term relative to the portfolio proposed in the Company's direct case. During the hearing, the Settling Parties agreed that Hearing Exhibit 145, Attachment MRS-6 replaces the Attachment filed with the Settlement Agreement. As such, the Agreement is construed as including Hearing Exhibit 145, Attachment MRS-6 as an attachment in lieu of Hearing Exhibit 143, Attachment A. Similarly, all references in the Agreement to Appendix 1 are construed as referencing Hearing Exhibit 145, Attachment MRS-6.

54. Also during the hearing, the Settling Parties agreed that the information provided in the Company's July 25, 2024 filings (including settlement testimony and attachments) in response to Decision No. R24-0465-I accurately reflect and are consistent with the Settlement Agreement.<sup>85</sup> As a part of those filings, the Company submitted a redlined version of the Plan and an updated, clean version of the Plan that reflects the Agreement's terms and conditions.<sup>86</sup>

55. For the reasons and authorities discussed, we find that the preponderance of the evidence establishes that, with the changes discussed below, the Settlement Agreement reflects a just and reasonable compromise between the Settling Parties to resolve all issues that have been or could have been raised here; is in the public interest; and is just, reasonable, and not discriminatory. Unless indicated in this Decision, the Commission approves all terms of the Settlement Agreement.

56. The Commission appreciates that the Parties – who represent a wide array of interests – were able to find common ground and settle the range of issues represented in a very

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<sup>85</sup> August 8, 2024 Tr., 12: 20-25—14: 1-4.

<sup>86</sup> Hearing Exhibit 145, Attachment MRS-7 is the redlined version and Hearing Exhibit 145, Attachment MRS-10 is the clean version. During the hearing, the Company explained some key information helpful to understanding how to interpret the updated Plan (Hearing Exhibit 145, Attachment MRS-7). August 8, 2024 Tr., 120: 11-25—143: 1-23.

large and complex Plan filing. Overall, we find the Settlement establishes an appropriate support structure for the Company's DSM programs to achieve valuable energy savings and commensurate emission reduction benefits within the confines of a reasonable budget. That being said, we find it necessary to take several additional steps in this Decision beyond a simple approval of the Settlement. First, we find it necessary to take administrative note of recent budgetary pressures and complexities that arose administering the business programs and to implement a solution that we believe meets the cost containment intent of the Settlement Agreement while maintaining a healthy DSM vendor industry. Second, we find it necessary to reiterate recent Commission guidance regarding the use of flexibility budgets, and to offer further explanation of the Commission's perspective on the use of financial resources. Further, we find it necessary to implement certain procedural refinements to facilitate a more straightforward and effective regulatory regime. Finally, we utilize this opportunity to offer our perspective on cost recovery as it pertains to budget constraints, the cost effectiveness of the Company's BE program and the mechanics of other initiatives embodied in this Settlement Agreement. We discuss each of these points as applicable in the relevant sections below.

57. With the caveats mentioned below, we generally find the average annual electric EE, gas EE, and BE spending and savings levels just and reasonable, supported by a wide array of parties, and in the public interest.

## **2. 2024 Electric DSM Budgetary Pressures**

58. As explained in Public Service's Initial Notice, the Company found it necessary to pause all business programs by late July due to significant and unexpected budgetary pressures. The Company explained that was partly due to the availability of bonus rebates that the vendor community leveraged into an extraordinary number of projects and applications for Company

rebates. Payment of budget overages in 2024 – projected to be as high as \$34.1 million – was the subject of significant concern raised by Staff, UCA, CEC and Climax. As discussed in the Commission’s Decision No. C24-0652, these parties raised numerous concerns regarding the sanctity of the settlement agreement in 22A-0315EG, the need for cost containment during the energy transition, and the need for improved oversight of DSM spending by the Company and the vendor community who markets and implements DSM programs on the Company’s behalf. Public Service, EEBC, SWEEP, WRA and NRDC filed responses as well generally arguing the Company’s DSM programs are highly cost effective (including being well below the cost of supply-side resources), require complex integration with the vendor community, and require a vibrant vendor community with a continuity of expertise and capability to deliver DSM resources.

59. The primary issue surrounding the budgetary pressures represented in the Budget Motion, EEBC/SWEEP Petition and Motion, and associated responses, was whether \$18 million for projects fully completed but for which payment is paused (“In Review” applications) and an additional \$16 million for projects that have been bid and/or work initiated (“Pipeline” applications) should be paid out in 2024.

60. At this juncture, the Commission is tasked with weighing the need to maintain annual budgets as defined in our SI order and agreed to in the Settlement against the need to maintain the vibrancy of the vendor industry and consistency for customers. Unfortunately, the requests put forth before the Commission related to this issue have had to be undertaken on an emergency basis, in large part because the Company did not make the Commission aware of impending budget concerns nor take any official action related to the budget before the Commission in a more preemptive fashion. The Company provided vendors with only two days’ notice of an indefinite pause in programming and left all stakeholders, including the Commission,

scrambling to understand the issue and an appropriate resolution that could appropriately address the urgent matter. We note that the Company consistently referred to average budget and energy savings levels embedded in the Plan application (and ultimately adopted in the Settlement).<sup>87</sup> The Company also referred to the Commission's emphasis on adhering to the average budget while recognizing that there may be variance in annual spending year to year over the course of the SI period.<sup>88</sup> For the Electric EE program, the average Plan budget is set at \$92.8 million and Plan energy (first year) savings level is set 442.5 GWh.

61. With respect to payment of vendors for work completed in 2024, we encourage Public Service to remove the pause in its business programs, make payment on compliant applications and generally reestablish program continuance during the pendency of this Proceeding. We believe a healthy vendor industry is critical to the long-term success of the Company's DSM program and the current pause in application processing and payment places undue financial burden on the vendor community. However, the Commission strongly suggests Public Service and the stakeholders consider refining program logistics to reduce the possibility of such budgetary pressures occurring again. Specifically, we suggest the Company consider opportunities to improve its insight into the pipeline of applications through adjustment to its Customer Relationship Management ("CRM") tool (including mandatory vendor use of the CRM for all projects or projects of a certain size), establishing a preapproval process for projects that exceed a budget or implementation period threshold, or other mechanisms as the stakeholder group deems appropriate in order to meet the broad objective of efficient management and appropriate

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<sup>87</sup> Hearing Exhibit 101 at 26:11-15.

<sup>88</sup> Hearing Exhibit 144 at 7, citing Proceeding No. 22A-0309EG, Decision No. C23-0413 at ¶ 35.

oversight of the DSM programs. We suggest that preapproval of larger projects may provide mutual benefits of reduced risk for both the Company and the vendors implementing the programs.

62. With respect to the impact on the budget of maintaining vendor payments, we note that in our Order to the Company's SI application, we stated we "the Commission anticipates that the Company could present some variation in budget from year-to-year, while achieving the established budget limit here on an average basis over the course of the SI period."<sup>89</sup> We also note that we approved \$93.6 million per year (representing \$280 million in total) toward the Electric EE program for the 2024-2026 period through that decision. We also generally agree with CEC that we must strive to manage costs, even for cost-effective DSM, as there can be significant lost revenues and longer-term rate impacts for non-participating customers. Accordingly, we find that the Company should take reasonable steps necessary to stay within both expected average spending rates and targeted savings levels. We direct the Company to manage its DSM spending in a manner that facilitates the average spending rate agreed to in the Settlement over the course of the Settlement term of this Proceeding (2024-2026).

63. While rebates are referenced separately in the Settlement, and thus discussed again below, we direct the Company – working closely with the parties and other DSM stakeholders – to continually track, monitor and refine measure-specific rebates, customer eligibility and program participation and other program mechanics so that program expenditures stay within the financial confines agreed to in the Settlement on a total or average annual basis. We recognize the Company is charged with competing objectives of meeting energy savings targets and budget constraints, but it and other stakeholders should take steps necessary over the duration of the Settlement term to find the appropriate balance to meet both objectives simultaneously through careful adjustments

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<sup>89</sup> Proceeding 22A-0309EG, Decision No. C23-0413, ¶35.

to rebates and other program criteria. We note that the 60/90-Day Notice process is designed to facilitate modifications to rebate design (or terminate programs), but we suggest that even faster modifications to rebate levels may be necessary, particularly in cases where rebates are expanded through “bonus” initiatives, to the extent faster modification can comply with program terms and conditions and existing agreements. We encourage the Company to work with stakeholders to assess and implement mechanisms that balance the logistical realities of the Company’s reliance on the vendor community to market and implement the DSM programs against the need to quickly adapt to changing market conditions to meet the cost-containment goals represented in the Settlement. While the Commission strongly encourages the Company to work closely with stakeholders – via the quarterly meetings and the 60/90-Day process – to manage the programs in an efficient and cost-effective manner, it is ultimately the Company’s responsibility to steer the program mechanics to meet the objectives of achieving or exceeding the savings targets, program continuity through appropriate communication with vendors, and cost containment within the allotted budget. If the Company determines it cannot meet any of these objectives, it should file a motion in this proceeding on a more reasonable timeline so that the Commission may have the appropriate time and record to make an informed decision.

64. We recognize that by directing the Company to exceed its 2024 budget to cover the business program budgetary pressures discussed above, cost recovery under the DSMCA could be impacted. It is our strong desire to maintain relatively stable rates for Public Service customers to facilitate affordability and reduce confusion. Accordingly, we find it necessary to indicate our preference that program overages (*i.e.*, expenditures higher than annual customer class-specific budgets) incurred in 2024 should be held within the DSMCA deferred account and amortized over a two-year basis from July 2025 – June 30, 2027. As DSM expenditure levels are lowered through

rebate reduction or other program modifications, as described above, it is our expectation that Public Service is repaid deferred balances over the amortization period described and inter-class subsidies are minimized. As the Company indicates, there is currently no interest applied to deferred balances in the DSMCA-E. We believe that is appropriate and a reasonable inducement for the Company to manage its programs carefully and consistently with as minimal year-to-year variance as possible.

65. With respect to the Company's PIM, the Commission notes that in our Order in the Company's Strategic Issues Proceeding (22A-0309EG), we set the PIM for the Electric EE program at 8 percent of the net benefit (excluding the social cost of emissions) starting at 80 percent of the annual savings target. Public Service's share escalates by 1.5 percent for each five percent improvement in achievement, terminating at 125 percent.<sup>90</sup> We note that, given our directive above to maintain payments to vendors in 2024 and but maintain the overall budget agreed to in the Settlement Agreement, Public Service will likely overachieve its savings target in 2024 but will have a reduced chance of meeting its savings targets in 2025 and 2026. We also note that, per the 125 percent PIM cap established by the Commission in our Order to the Company's SI proceeding, the 2024 budgetary pressure may not be fully accounted for in the PIM for 2024. Overall, we find the PIM, as currently established in the SI order (and refined by our Order in response to RRR applications) appears to strike the appropriate balance. Accordingly, we reaffirm the PIM mechanism as currently applied. Specifically, the PIM will apply to the year the investment is paid for. Rebates paid in 2024 will count toward the 2024 savings achieved.

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<sup>90</sup> Decision No. C23-0413 in Proceeding No. 22A-0309EG at ¶ 104-105, modified by Decision No. C23-0523 at ¶ 8.

Similarly, rebates paid in 2025 or 2026 will count toward the achieved savings in those years, respectively.

### 3. Use of the Flexibility Budget

66. The Commission notes that in the Clean Heat Plan final Decision (Decision No C24-0397), we established a series of guidelines for the Company and the parties to consider in setting final Plan budgets including the following guidance: “Flexibility funding should produce proportional energy savings and/or emission reductions on a unitized basis as primary funding for all resources unless the Company can explain the necessity to change the unit values embedded in the approved primary funding levels.”<sup>91</sup> The Company contends in the instant Proceeding that it needed to immediately incorporate the flexibility budget into its Plan budget because it is not possible to obtain the savings required in the Commission’s SI order on the base budget alone. The Company submitted the GBGB model to support that contention and suggested the model incorporated years of experience and data.

67. Staff indicated its concern that the Company requested nearly all its budget flexibility at the start of this Proceeding and that Public Services proposed total budget represents “a different interpretation of the granted flexibility.”<sup>92</sup> Ultimately, Staff recommended approval of the Plan Electric EE budget<sup>93</sup> and was a signatory to the Settlement Agreement.

68. The Commission notes that the base expenditure and energy savings levels approved in the Company’s Strategic Issues proceeding (representing \$78 million and 440 GWh of first year energy savings) result in a ratio of \$177/MWh of savings, or 5.6 GWh for each \$1 million of DSM investment. The Company’s Plan, as supported by the Parties to the Settlement

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<sup>91</sup> Decision No. C24-0397 at ¶ 256, in Proceeding No. 23A-0392EG.

<sup>92</sup> Hearing Exhibit 400 at 17:9-16.

<sup>93</sup> *Id.* at 19:4-7.

Agreement, equates to a ratio of \$206/MWh of savings. The Commission also notes that the Initial Notice indicates that, through mid-year 2024, the Company's savings rate was \$176/MWh<sup>94</sup> of savings (\$69.9 million of expenditure resulting in 369.9 GWh of savings), almost precisely the value the Commission approved in its Strategic Issues order. The Company also indicated in its Initial Notice that it expects year-end savings of 593.5 GWh on expenditures of \$115.6 million, indicating a full-year cost of savings at \$195/MWh<sup>95</sup> of savings. While we recognize there are numerous factors that lead to specific expenditure and savings levels, we note that the actual implementation data from the most recent year available does not immediately support the Settlement's nearly full use of the flexibility budget or even the Company's contention that it cannot meet the SI savings target with the Base budget alone. Based on this 2024 data, we expect that the Company should be able to maintain its cost containment obligations while meeting the savings targets established in the Commission's SI order so long as the Company can manage down expenditure levels through careful rebate and other program adjustments, as described above.

69. We also note that, to the best of our recollection, the GBGB model was not submitted nor evaluated in the Company's Strategic Issues application. We recognize that the Strategic Issues and Plan applications support somewhat different purposes in establishing goals for, and implementing details of, DSM programs. However, we believe that the two proceeding types are highly interrelated and that detailed modeling capability portrayed by the Company as being part of the GBGB could have been quite useful in setting goals and budgets in the SI proceeding. We discuss the inter-relationship of the SI and Plan proceedings further below as well

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<sup>94</sup> Hearing Exhibit 147 at 4.

<sup>95</sup> *Id.*

as the need for procedural modifications. With respect to the quantification capability represented in the GBGB model, we direct Public Service to submit in executable format and support via thorough direct testimony the GBGB model, as well as other executable models used internally to evaluate DSM program capabilities, as part of its next SI proceeding, expected in 2026. Additionally, the Company should support and provide sources for major assumptions used in the GBGB model with direct testimony. The Commission endeavors to comprehend via the GBGB model how various incentives from a variety of sources including federal, state and local incentives, impact market participation and encourages Public Service to facilitate that understanding to the extent the GBGB model and other Company insights can. We also note that, via our Order in the Company's SI proceeding, Public Service is expected to provide an updated DSM potential study to improve the comprehension of appliance replacement and adoption in the Company's service territory. We encourage the Company, the vendor community and the stakeholder parties to endeavor to comprehend the potential market of the Indoor Agriculture industry that represented such a significant portion of the Electric EE program participation and cause of the budget pressures, as well as other burgeoning industries that could lead to a similar, unexpected demand for DSM services.

70. With respect to incorporation of the flexibility budget in the immediate Plan, we find that doing so requires a level of budgeting accuracy that is very difficult to facilitate when implementing the programs in real time. We believe the budget pressure as presented in the Initial Notice and subsequent documents represents a powerful example of why it is necessary to not plan the budget to include fully both the Base and Flexibility spending levels. In the future, the Company should plan toward and endeavor to adhere to the Base budget levels first and foremost. Flexibility budgets should generally be reserved for extraordinary circumstances such as higher

than projected participation rates, and ideally should be utilized after thorough consideration by the stakeholders and the oversight the stakeholder process represents.

71. The Commission also notes that it can be difficult to assess the cost basis of DSM programs given the large values of dollars and energy savings presented in relevant DSM documents. Accordingly, we direct the Company to convert proposed and reported spending and savings levels on a unitized basis, represented as either \$/MWh (electric saved) and \$/MDth (gas saved) or GWh/\$ million (electric) and MDth/\$ million (gas) invested. We believe the addition of such a unitized metric will assist in the transparency of the values presented and improve the Commission's ability to evaluate the body of evidence presented by the Company and the parties.

#### **4. Procedural Modifications**

72. We recognize that each proceeding requires extensive effort from the parties that intervene and participate, and that there may be certain efficiencies of maintaining the practice of conducting smaller, more manageable proceedings, particularly for intervenors with limited resources. However, we must weigh that against the fact that the instant proceeding (as well as other recent plan proceedings) is being finalized with an approximate delay of nine months (even prior to RRR applications) as compared to the applicable time period for the plan. Such delays reduce the effectiveness of our decisions and, in the end, require more effort and cause more uncertainty among the Company, the parties and the Commission. We also note that the instant application, filed only months after the Commission's decision in the Strategic Issues proceeding, proposed spending and savings levels contrary to what was set in our SI Order. We believe this only frustrates the effectiveness of the SI and subsequent plan proceedings. Finally, as described above, the Company submitted in the instant proceeding modeling studies that indicate it cannot meet the targets set in the SI proceeding. We find that SI and Plan proceedings are so

interconnected, that the Commission should have detailed models, such as the GBGB, to not only evaluate the correct rebate levels, but to assess the relationship of rebates to program participation, projected savings levels and the establishment of DSM budgets. For the reasons stated above and to facilitate greater regulatory efficiency in DSM planning overall, we find it necessary to modify the procedural pathway by which DSM programs are proposed and reviewed by the Commission. Accordingly, we direct the Company to file with its next SI filing (pursuant to Rule 4761)<sup>96</sup> its proposed final rebate and program mechanics as it generally would for a DSM plan proceeding (pursuant to Rule 4753) at the same time. As directed above, this information should include the GBGB model and similar evaluations used to evaluate and set program rebates and other incentives. The Commission will review testimony regarding these materials simultaneously and holistically in order to inform our decision.<sup>97</sup> However, we will explore at the prehearing conference (or similar early time in the proceeding) a Phase II to this combined process in which there is additional time to establish final program mechanics (such as measure-specific rebate levels) and to provide an opportunity for parties to settle program mechanics once larger issues of budget and savings levels are clarified in the Commission's Phase I order. The Commission may find it necessary to shift the finalization of other issues into the Phase II process as well at that time. We find that, by evaluating the SI and DSM filings holistically and on the same time frame, we will be more likely to effectively adjudicate the issues in a timely manner and reduce the uncertainty, delay and inconsistency associated with the current practice of separately adjudicating Strategic Issues and DSM Plan proceedings. The Commission recognizes that SI and DSM Plan

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<sup>96</sup> Pursuant to Commission Decisions No. C23-0413 and C24-0397, Public Service shall file a combined SI/CHP Application no later than July 1, 2026.

<sup>97</sup> The Commission finds good cause to waive the timing requirements found in the Commission's Rules Regulating Demand Side Management for electric and gas utilities to the extent they prescribe a filing schedule that does not comport with the guidance in this Decision for application only for Public Service's next filing.

proceedings have unique application cadences by statute. We will evaluate the appropriate cadence for both applications as part of our evaluation of the application overall when filed in 2026.

**5. Remaining Settlement Terms**

73. The Commission accepts all terms of the Settlement Agreement, regardless of whether they are reproduced in the below sections. The Commission provides additional context on certain Settlement terms below.

**a. Electric Demand Management (“DM”) Target and Budget**

74. The Settling Parties agree the Commission should approve the Company’s proposed cumulative electric DM<sup>98</sup> budget<sup>99</sup> and target capacity savings<sup>100</sup>, reproduced below:

**DM Savings<sup>101</sup>**

Year	Capacity Savings (Summer, MW)	Capacity Savings (Winter, MW)
2024	633	292
2025	657	306
2026	683	328

**2024 to 2026 Estimated Electric DM Budget<sup>102</sup>**

Year	2024	2025	2026
Budget	\$23.4 M	\$24.5 M	\$25.0 M

75. The Settling Parties agree that the Company “shall have a presumption of prudence” for DM expenditures recoverable through the Demand-Side Management Cost Adjustment

<sup>98</sup> The Agreement explains that it uses the DM (demand management) terminology over demand response (“DR”) terminology to reflect more flexible programs that provide grid services under a variety of scenarios (rather than traditional DR resources that focused on summer peak load reduction). Hearing Exhibit 143 at 7, fn. 2.

<sup>99</sup> Hearing Exhibit 103, Table SMW-D-3, 17: 7-8.

<sup>100</sup> Hearing Exhibit 101, Table NCM-D-7, 30: 1-3.

<sup>101</sup> Hearing Exhibit 143 at 6.

<sup>102</sup> Hearing Exhibit 143 at 6.

(“DSMCA”) under the Plan up to the budget estimates, plus 20 percent budget flexibility.<sup>103</sup> The Agreement provides that any DM programs authorized or ordered outside of the Plan does not count against the DM budgets or the 20 percent flexibility, unless the Commission orders otherwise.<sup>104</sup> It also provides that any new DM pilots implemented as part of the Plan, including those implemented using the 60/90-Day Notice Process, are subject to this Plan’s provisions.<sup>105</sup>

**b. DM Performance Incentive Mechanism (“PIM”)**

76. The Company proposes a DM PIM<sup>106</sup> that builds on the Commission’s criteria for a DM PIM<sup>107</sup>, the Company’s DM PIM proposal in 2022 DSM Strategic Issues proceeding, and intervenor feedback on that proposal.<sup>108</sup> The DM PIM proposed in this Plan is based on awarding the Company a percentage of net benefits, with that percentage calculated as a function of program achievement. Specifically, the Company proposed the following PIM design attributes:

- a. Calculation of net benefits will be determined using the Utility Cost Test.
- b. Contribution to the “incentive pool” is determined by multiplying the product’s “realization rate” by ten percent.<sup>109</sup>
- c. The “realization rate” is calculated by dividing a product’s actual load management that occurs during an event by the product’s enrolled load.<sup>110</sup>
- d. The final incentive is calculated by averaging the percentage of summer and winter DM achievement and multiplying that value by the incentive pool. The Company must achieve 80 percent of both its summer and winter goals to qualify for a DM incentive in a given year, and that it cannot receive an incentive greater than 110 percent of the incentive pool, or more than 15 percent of the total Utility Cost Test net benefits.
- e. The Company proposes to track and report PIM achievement criteria through its annual DSM Status Report. It also proposes to remove any net benefits associated

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<sup>103</sup> Hearing Exhibit 143 at 7.

<sup>104</sup> Hearing Exhibit 143 at 7.

<sup>105</sup> *Id.*

<sup>106</sup> Hearing Exhibit 103, Direct Testimony of Shawn M. White.

<sup>107</sup> *Id.* at 39-40.

<sup>108</sup> *Id.* at 33-34.

<sup>109</sup> For example, if a product has a 90 percent realization rate in a given year, the incentive pool would reflect 9 percent of that product’s Utility Cost Test net benefits.

<sup>110</sup> If no event occurs, the company proposes using a test event. If a product contributes to summer and winter DM, the actual load management is the average of its summer and winter performance.

with a DM event from benefits associated with EE performance to ensure there is no double counting of benefits across the different PIMs for DSM measures.<sup>111</sup>

- f. The net benefits calculated and used to calculate PIM incentives are *incremental* net benefits.<sup>112</sup>

77. The Settling Parties agree the Commission should approve the Company's proposed DM PIM with the following changes:

- The Base Incentive Pool Contribution is reduced from ten percent to six percent of Utility Cost Test (UCT) net benefits;
- The maximum Combined Realization Rate for any DM program is 110 percent;
- The achievement threshold to qualify for an incentive in any given year is increased from 80 percent to 90 percent of both summer and winter capacity goals;
- The maximum percent of the incentive pool is increased from 110 percent to 120 percent; and
- The incentive earned in any single year may not exceed ten percent of UCT net benefits—from 15 percent—or \$4 million, whichever is lower.<sup>113</sup>

78. The Commission directs the Company to use the results of this DM PIM achieved during this plan period to determine if the most prudent ongoing design for this PIM is upside only with a deadband, or if the design should be modified to include a downside for underachievement.

**c. Products, Measures, and Pilots for DSM and BE Plan<sup>114</sup>**

79. The Settling Parties agree the Commission should approve the Company's proposed products, measures, and pilots, and their associated budgets in Hearing Exhibits 102 and 110, and Hearing Exhibit 101, Attachment NCM- 1, including and subject to the modifications discussed below.<sup>115</sup>

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<sup>111</sup> Hearing Exhibit 103 at 35-41.

<sup>112</sup> Hearing Exhibit 111, Rebuttal Testimony of Shawn M. White.

<sup>113</sup> Hearing Exhibit 143 at 7-8.

<sup>114</sup> The Agreement provides that updates to rebate levels and program requirements in the Residential HVAC product and Insulation and Air Sealing product will also apply to the Whole Home Efficiency product. Hearing Exhibit 143 at 11.

<sup>115</sup> Hearing Exhibit 143 at 8.

**(1) Terminology Changes**

80. The Agreement provides that Company will revise terminology in program offerings to better align with federal, state, or industry standard terminology where appropriate.<sup>116</sup> The Company will make these changes in its customer- and contractor-facing materials and in its final, approved DSM and BE Plan.<sup>117</sup>

**(2) Rebate Incentives Changes**

81. The Settling Parties agree that the Company will offer BE incentives under this Plan to all dual-fuel, gas-only, and electric-only retail customers.<sup>118</sup>

82. The Agreement requires the Company to collect and report on actual installed costs of heat pump equipment in its DSM/BE annual status reports filed as part of this Plan.<sup>119</sup> The Company will incorporate updated equipment costs in its technical assumptions, as necessary on an annual basis, in a 60-Day Notice Process for BE equipment, through this Plan period.<sup>120</sup> When conducting cost-effectiveness testing, the Company will reflect these updated equipment costs in its analysis.<sup>121</sup>

83. The Agreement provides that rebates for all non-cold climate air source heat pumps (“ASHP”) will be \$300 per rated cooling ton at 95 degrees Fahrenheit in the Residential HVAC (heating, ventilation, and air conditioning) product.<sup>122</sup> Rebates for all cold climate ASHP will be \$750 per rated ton of heating capacity at 5 degrees Fahrenheit in the Residential HVAC product.<sup>123</sup> Rebates for ground source heat pumps will be \$1,100 per ton of heating capacity in the Residential

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<sup>116</sup> *Id.* This includes using “ducted,” “partially ducted,” and “non-ducted” to describe types of air source heat pumps systems in place of the terms “air source heat pump,” “mini split,” and “multi split.”

<sup>117</sup> Hearing Exhibit 143 at 8-9.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 9.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

HVAC product.<sup>124</sup> Downstream rebates for heat pump water heaters in the Residential HVAC product will be increased to \$750 per unit.<sup>125</sup> The Company also commits to offering, promoting, and enrolling customers in a DM-capable heat pump water heater rebate for water heaters that meet the eligibility requirements for the Smart Water Heater DM product.<sup>126</sup>

84. The Agreement requires that residential (including single and multi-family), non-profit, and IQ customers with preexisting natural gas heat systems must maintain gas heat backup to qualify for non-cold climate ASHP heat pump rebates.<sup>127</sup>

85. All changes to the Residential HVAC product proposed in the Plan and modified through the Agreement will be proposed through the Company's filing of a 60/90-Day Notice that will be filed no later than May 31, 2024.<sup>128</sup>

86. The Agreement alters the Insulation and Air Sealing product by increasing the maximum preexisting attic insulation level will to R-24 and increasing the minimum completed attic insulation level to R-60; and increasing the maximum rebate amounts for air sealing and attic insulation measures to \$400 and \$500, respectively.<sup>129</sup> The Agreement provides that the Company will convene two meetings per year to facilitate a dialogue among insulation and air sealing contractors and interested stakeholders related to program improvements.<sup>130</sup>

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Hearing Exhibit 143 at 10-11.

<sup>127</sup> Hearing Exhibit 143 at 10.

<sup>128</sup> *Id.* During the hearing, the Company explained that it fulfilled this Agreement term because it proposed changes for the Residential HVAC product by the May 31, 2024 deadline. The Company explained that the accelerated timeframe in provision reflects parties' desire for changes to be made in time for the next cooling season. (*See* August 8, 2024 Tr., 54: 12-25—55: 1-25).

<sup>129</sup> Hearing Exhibit 143 at 11.

<sup>130</sup> Hearing Exhibit 143 at 12.

87. The Agreement requires the Company to discuss and evaluate with stakeholders opportunities to further incentivize pairing efficiency improvements and electrification measures as part of its DSM stakeholder engagement process.<sup>131</sup>

88. The Company will “reasonably endeavor” to establish consistency in setting minimum eligibility requirements for cold climate ASHP rebates in coordination with other rebating entities in Colorado, and between commercial and residential applications.<sup>132</sup> Residential cold climate heat pump rebate requirements will be set at a level such that all rebated equipment qualifies for the Section 25C federal tax credits which, at present, meets or exceeds the highest non-advanced efficiency tier published by the Consortium for Energy Efficiency (CEE).<sup>133</sup> As necessary, minimum eligibility requirements will be updated through the 60/90-Day Notice process, including based on changes to federal eligibility requirements.<sup>134</sup>

89. The Company will convene relevant parties, including other rebating entities as feasible, at least once annually, to review potential changes to technical specifications and performance standards for heat pump rebates, including those that require changes through the 60/90-Day Notice Process.<sup>135</sup> As feasible, the Company will communicate planned or potential changes to the heat pump technical specifications and performance standards at such meeting(s), and at quarterly DSM roundtables, to solicit feedback.<sup>136</sup>

90. The Company agrees to rescind its proposal to provide rebates through the Outdoor Equipment product and will re-allocate those proposed funds within the BE portfolio.<sup>137</sup>

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<sup>131</sup> Hearing Exhibit 143 at 11. This discussion, which contains additional requirements outlined in HE 143 at 11-12, will involve at least two meetings with interested stakeholders by December 31, 2024.

<sup>132</sup> Hearing Exhibit 143 at 12-13.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> Hearing Exhibit 143 at 13-14.

91. The Agreement provides that rebates for interior occupancy, dimming, and combination lighting controls will be increased to \$0.20 per connected watt and that networked lighting control rebates will be held constant at \$0.40/W.<sup>138</sup> Retrofit exterior daylight controls will be available at \$0.10/W.

92. The Agreement adds incentives for LED light conversion made by municipalities that own their own streetlights.<sup>139</sup>

93. The Agreement requires the Company to adjust the Residential New Home Construction product to allow Phius and PHI as compliance pathways for Tier 3 rebates.<sup>140</sup>

### (3) Income-Qualified Programming Changes

94. The Agreement provides that all commercial prescriptive market rate measures, and their associated deemed savings, will be accessible for use within its IQ programs without requiring custom analysis as a prerequisite subject to the following clarifications:

- Such measures shall be eligible for an enhanced IQ prescriptive rebate, which at a minimum shall be the commercial market rate prescriptive rebate level plus a minimum 25 percent adder.
- The program will adopt non-energy benefit adders for all prescriptive measures when considering project level cost effectiveness.<sup>141</sup>
- The program will implement a rebate structure designed for flexibility, allowing Public Service to determine suitable incentives between the minimum rebate level and up to the full cost of the measure.
- Rebate determinations will consider available complementary funding, such as the Inflation Reduction Act (“IRA”), as well as programmatic savings goals and budgets.<sup>142</sup>

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<sup>138</sup> *Id.* at 14.

<sup>139</sup> *Id.* The Company will add the following prescriptive rebates for LED street lighting conversions for customer-owned streetlights: a) 40-109W: \$25/fixture (fixt), b) 110-139W: \$40/fixt, c) 140-209W: \$50/fixt, and d) 10-350W: \$60/fixt.

<sup>140</sup> Hearing Exhibit 143 at 14.

<sup>141</sup> The Agreement cites Hearing Exhibit 101, Attachment NCM-1 at 330-332, 342-344, and 354-356 as a part of this Agreement term. Hearing Exhibit 143 at 15, fn. 3.

<sup>142</sup> Hearing Exhibit 143 at 14-15.

95. The Agreement requires the Company to maintain its current incentive levels (\$5,200) for heat pump water heaters in the Single Family Weatherization product, but also provides that this rebate may be reduced on a case-by-case basis if outside funding is available.<sup>143</sup>

96. The Company will use the definition of Disproportionately Impacted (DI) Community in § 24-4-109(2)(b)(II), C.R.S., (established by House Bill 23-1233).<sup>144</sup>

97. As to education, outreach, and engagement, the Company:

- will continue planned education, outreach and engagement efforts as outlined in Hearing Exhibits 102 and 110;
- will include its outreach and engagement with IQ/DI Communities related to this Plan within the Company's broader IQ/DI Community Outreach and Engagement Plan;
- will align its planned education, outreach, and engagement with its ongoing efforts to support its Transportation Electrification Plan and Renewable Energy Standard Plan;
- commits to sharing its activities, outcomes, findings, and lessons learned with parties and stakeholders through its quarterly roundtables and annual DSM/BE status reports, when such information is available.
- agrees to the same reporting obligations in its Settlement Agreement at Section 68.9 in Proceeding No. 23A-0242E.<sup>145</sup>

#### (4) DM Programming Changes

98. The Agreement requires the Company to evaluate and seek feedback from stakeholders on the design for a residential peak time rebate pilot and a commercial battery pay for performance pilot.<sup>146</sup> If the Company identifies a pilot program opportunity that is technically feasible and can be funded within the DM budget flexibility in Paragraph 8 of the Settlement Agreement during this Plan, it will bring the pilot(s) forward through a 60-Day Notice.<sup>147</sup>

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<sup>143</sup> *Id.* at 15.

<sup>144</sup> *Id.* at 16.

<sup>145</sup> Hearing Exhibit 143 at 16-17. Hearing Exhibit 146 includes the portion of the Settlement Agreement in Proceeding No. 23A-0242E.

<sup>146</sup> Hearing Exhibit 143 at 17.

<sup>147</sup> *Id.*

The Company will provide updates on its progress toward these pilots and solicit stakeholder feedback through its DSM roundtables, and provide a status update in its 2025 annual report.<sup>148</sup>

99. The Agreement provides that during this Plan, the Company will evaluate the cost effectiveness of extending its AC Rewards program to individually-metered multifamily customers.<sup>149</sup> Prior to, or as part of, the Company's next DSM plan filing, the Company will report on its evaluation and provide a recommendation on whether the AC Rewards program should be extended to those customers and any program modifications necessary to do so.<sup>150</sup>

#### **(5) Education and Outreach Changes**

100. The Company commits to engage directly with applicable local jurisdictions on contractor education and customer outreach materials and initiatives, potentially to include locally relevant information related to policies, building codes, and rebate programs.<sup>151</sup>

101. The Agreement requires the Company to evaluate opportunities to either develop tools and resources or endorse further methodologies for contractors to use to provide customers with estimated bill impacts from various measures in the Plan.<sup>152</sup> If the Company identifies an appropriate resource to best deliver estimated bill impacts, it will support distributing the resources and training the trades to assure it is applied appropriately.<sup>153</sup>

#### **d. Targeted Demand Areas Methodology**

102. Company witness Mr. Mark proposes a concept called Targeted Demand Areas ("TDAs").<sup>154</sup> The Company states that the proposal is adapted from the Company's TDA proposal

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<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> Hearing Exhibit 143 at 17.

<sup>151</sup> *Id.* at 18.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Hearing Exhibit 101 at 54.

from the 2022 Strategic Issues Proceeding.<sup>155</sup> Relevant details from the Company's proposed TDA in this proceeding has the following attributes:

- a. The Company proposes to use an estimated average cost of distribution capacity which they would incorporate into a cost-benefit analysis for DSM programs targeting specific areas of the system. The Company has used several future projects rather than estimated based off recently completed projects.
- b. The Company proposes to do targeting marketing and communications to customers in these areas, including possibly offering increased incentives, to drive participation in measures to produce peak gas distribution capacity savings.
- c. Cost effectiveness would be maintained by assessing what additional programmatic costs could be taken on in (b.) relative to the costs calculated in (a.),
- d. The Company has analyzed identified projects with preliminary actual cost estimates, but concedes that it has not conducted a thorough assessment of upgrade costs and that the actual projects are not yet part of the Company's capital budgets. The Company states that it reflected the "high-end cost estimate" for these assessments.
- e. The Company does not guarantee that if a TDA's savings target is reached there will be no infrastructure investment needed for that TDA. However, the Company proposes that if a capacity investment that was targeted for avoidance through a TDA is later constructed, it will deduct from its net benefits the difference between the claimed net benefit and the net benefit calculated without the estimated cost of capacity for any year beyond the year of construction up to the end of the measures' useful life. The Company states this would effectively true-up the net benefits to reflect only costs that are actually avoided through DSM.<sup>156</sup>

103. The Settling Parties agree the Commission should approve the Company's revised methodology to support TDAs in Hearing Exhibit 101, with the below additional requirements.

Specifically, the Company:

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<sup>155</sup> In the 2022 Strategic Issues Proceeding, the Company proposed an approach to valuing gas capacity savings that would allow the development of focused marketing and incentives in a particular part of the gas distribution system that was not currently constrained, but may be in the future. Conceptually, the Company believed that this allowed them to use average costs from actual pipeline reinforcement projects to estimate the potential cost savings that could be achieved if a project could be avoided. Because the intent was to target parts of the system that were not yet constrained, the approach would have been less rigorous than a full non-pipeline alternatives analysis. The Company's goal was to establish an intermediate capacity value that was more granular than the system average value that would occur regardless of where on the system savings may happen, but not as detailed as a non-pipeline alternative analysis. The Company believed this would allow them to reflect an estimated value of preventing a given part of the system from reaching a point where additional capacity was needed. The Commission did not approve this methodology, stating that while it generally supported the idea, as proposed, it could produce enhanced benefits to the Company without actually resulting in savings to ratepayers through avoidance of any project expenditures or consideration of gas demand response, specifically.

<sup>156</sup> Hearing Exhibit 101 at 50-59.

- will provide updates on activity in TDAs, including but not limited to information on enhanced incentives and customer outreach efforts in TDAs, in its quarterly DSM roundtable meetings to the extent such information is available;
- will provide a narrative status update on TDA activities in its annual DSM/BE status reports;
- will engage with local governments to enhance collaboration and outreach in these geographic areas, and as possible, will share TDA geographic information with local governments prior to initiating activities in these areas to facilitate coordinated outreach and layering additional services and incentives; and
- if the Company proposes to continue using TDAs in its next Strategic Issues proceeding, it will include a TDA prioritization framework in that proceeding and address how that is coordinated with or complementary to its Gas Infrastructure Planning pursuant to Rules 4550-4555 of the Commission's Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4.<sup>157</sup>

### (1) Tariffed On-Bill Product

104. The Agreement requires the Company to file an application or advice letter to offer tariffed on-bill financing no later than 60 days after a final Commission decision is issued in this Proceeding.<sup>158</sup> Before doing this, the Company will convene a stakeholder group, to which all Settling Parties will be invited, that must meet at least two times to discuss the details of a proposed on-bill financing program to be offered.<sup>159</sup>

105. The Commission has expressed ongoing desire to see a tariffed on-bill financing ("TOBF") proposal from the Company across various proceedings.<sup>160</sup> We accept this term with the following considerations.

106. The Commission suggests the Company incorporate three additional components into its program design. First, the Company should ensure that customers enrolling in a TOBF program have dedicated access to appropriate information regarding opportunities for upgrades,

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<sup>157</sup> Hearing Exhibit 143 at 18-19.

<sup>158</sup> *Id.* at 19.

<sup>159</sup> *Id.* at 19.

<sup>160</sup> See Decision No. C23-0413 in Proceeding No. 22A-0309EG; Decision No. C24-0397 in Proceeding No. 23A-0392EG.

incentives, benefits and potential savings over time.<sup>161</sup> Second, there should be intuitive, direct venues for connecting individuals and businesses with contractors that can simplify the process and provide equipment and installation. Third, there should be access to financing. On Bill Repayment or other programs should streamline the installation and finance process to reduce upfront costs and simplify the process for customers. Partnering with a network of contractors and installers throughout their service area who are empowered to enroll customers in the financing program and a system for them to do it quickly, easily and receive direct compensation through the financing program in a timely manner.

107. The Commission prioritizes these three components and requests that the Company include them in future program designs.

**e. Required Coordination with the Company's Clean Heat Plan**

108. The Agreement states that once the Commission issues a final decision approving the Company's Clean Heat Plan (in Proceeding No. 23A-0392EG), the Company will reassess the appropriate total incentive levels for all heat pumps considering the approved budgets and goals in both Proceedings, with an intention to increase total heat pump incentives above those agreed upon in this Proceeding.<sup>162</sup> During the hearing, Public Service explained that if it increases the incentive amount for customers installing heat pumps, it will use funding from the Clean Heat Proceeding, which has a BE budget for the same years as this Plan.<sup>163</sup>

109. The Settling Parties agree to implement the Clean Heat Plan coordination process as discussed by the Commission during its deliberation of the Company's Clean Heat Plan.<sup>164</sup> The

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<sup>161</sup> Tools like RMI's Green Upgrade Calculator or Rewiring America's Electric Appliances Savings Calculator are publicly available.

<sup>162</sup> Hearing Exhibit 143 at 19.

<sup>163</sup> August 8, 2024 Tr., 59: 12-25—60: 1-8.

<sup>164</sup> Hearing Exhibit 143 at 20.

Settling Parties will adhere to the process as formally approved in the Commission's final Clean Heat Plan decision, but generally understand that process to include the following, based on the Commission's May 15, 2024 deliberations in that Proceeding.<sup>165</sup>

110. The Settling Parties agree that if the final Commission decision in the Clean Heat Plan Proceeding authorizes the Company to capitalize its EE and BE incentives approved in that Proceeding, with a four-year (or longer) amortization schedule, and a return set at the Company's Weighted Average Cost of Capital ("WACC"), then, when calculating PIM amounts under the mechanisms approved in the SI Proceeding, the Company will proportionally allocate energy savings from measures incentivized using both Clean Heat Plan and DSM and BE Plan funding based on the relative incentive amount, as proposed by WRA in Hearing Exhibit 500, page 52, lines 6-8.<sup>166</sup> The Settling Parties agree that if the final Commission decision in the Clean Heat Plan Proceeding does not authorize capitalization, a four-plus year amortization schedule, and a return at the Company's WACC for EE and BE measures in the Clean Heat Plan Proceeding, then, when calculating PIM amounts under the mechanisms approved in the SI Proceeding, the Company may claim the full savings of those measures in calculating its EE and BE PIMs in this Plan.<sup>167</sup>

**(1) Cost Recovery and 60/90-Day Notice Process**

111. The Agreement provides that Plan costs should be recovered through the existing electric and gas DSMCA tariffs.<sup>168</sup>

112. The Settling Parties agree the Commission should authorize the continuation of the 60/90-day Notice process for modifications to the Plan.<sup>169</sup>

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<sup>165</sup> *Id.* at 19-20.

<sup>166</sup> Hearing Exhibit 143 at 21.

<sup>167</sup> *Id.*

<sup>168</sup> *See* Hearing Exhibit 143 at 22.

<sup>169</sup> *Id.*

113. The Commission agrees with these proposals so long as they are consistent with the guidance above in light of the budget constraints in 2024. As discussed above, we suggest the Company utilize the DSMCA deferred account and a two-year amortization to address the 2024 business program budgetary pressures.

**f. Rural Communities**

114. The Agreement requires the Company to track the uptake of each of its DSM and BE offerings on a zip code basis, and publicly provide this information for 2023 as an update to its 2023 annual DSM/BE status report issued no later than three months after the final decision in this Proceeding, and in future Plan years through its annual reports.<sup>170</sup> The Company will make a good faith effort to transition to providing this data on a census block group basis by the 2025 annual report.<sup>171</sup> As this data becomes available, the Company remains open to discussing equitable access to its programming, including for customers located in rural areas, as part of its DSM stakeholder process.<sup>172</sup>

115. The Company and Settling Parties recommend the Commission host a Commission Information Meeting or other public forum, such as the pending or a future equity docket, like Proceeding No. 21M-0171ALL, to discuss rural energy issues and other Company programs and incentives for customers located in rural areas.<sup>173</sup> If the Commission decides to host a Commission Information Meeting, the Company is willing to participate.<sup>174</sup> The Company is open to discussing

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<sup>170</sup> Hearing Exhibit 143 at 23.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* The inclusion of such a definition could be a topic of discussion in the forthcoming Commission equity rulemaking contemplated by Decision No. R24-0635-I in Proceeding No. 22M-0171ALL.

<sup>174</sup> *Id.*

or working to develop a definition of “rural” (or similar designation) at future quarterly roundtable meetings subject to any additional or separate Commission action (e.g., rulemaking).<sup>175</sup>

116. The Commission encourages the Company to utilize EnviroScreen, the Colorado Department of Health and Human Service’s mapping tool, to assist its transition to providing census block level reporting. This level of reporting is essential to long-term compliance with Senate Bill 21-272, and the Commission expects the Company to be a leader in the transition to equitable provision of utility programs.

**g. Cost Effectiveness of Plan as Modified by Agreement**

117. The Company submits that the Plan, as modified by the Settlement Agreement, is generally cost-effective, with caveats for the BE and IQ portfolios.<sup>176</sup> The Company performed modified Total Resource Cost test (“mTRC”) analyses for each Plan portfolio, as modified by the Agreement, which includes the social cost of carbon and methane emissions for each Plan year.<sup>177</sup> The below table outlines the results of those analyses:<sup>178</sup>

	2024			2025			2026		
	Electric EE	Gas EE	BE	Electric EE	Gas EE	BE	Electric EE	Gas EE	BE
<b>Business</b>	2.53	6.99	1.20	2.46	6.69	1.20	2.47	6.38	1.09
<b>Residential</b>	1.65	3.14	0.79	1.43	3.55	0.75	1.25	3.28	0.74
<b>IQ</b>	2.37	1.66	0.72	2.12	1.71	0.66	1.81	1.69	0.62
<b>Total Portfolio</b>	2.22	3.01	0.87	2.05	3.08	0.84	1.88	2.81	0.81

<sup>175</sup> Hearing Exhibit 143 at 24.

<sup>176</sup> Hearing Exhibit 144, 16: 1-5.

<sup>177</sup> Hearing Exhibit 144, 16: 5-9.

<sup>178</sup> Hearing Exhibit 144, 16: 10-11—17: 1 (Tables NCM-1, 2, and 3).

118. With an mTRC score lower than one for each Plan year, the Company estimates that its BE portfolio is not cost-effective.<sup>179</sup> The Company submits that in the SI Proceeding, the Commission acknowledged that in the early years of implementing BE, programs may not be cost-effective.<sup>180</sup> There is an expectation that this will change over time as technology costs come down and more customers and installers become familiar with the products, thereby making it easier to motivate participation.<sup>181</sup> Notably, the Company points out that in the SI Proceeding, the Commission agreed with the Company that BE will not be cost effective until 2026.<sup>182</sup> In that decision, the Commission stated: “Public Service argues the Commission should approve a volumetric [BE PIM] value, rather than a share of net economic benefits, because it does not project positive net economic benefits until 2026, and the Company should not wait until then to be incentivized to implement BE programs. ... For the near term, the Commission agrees with the Company that a volumetric approach is appropriate in this evolving context[.]”<sup>183</sup>

119. The Company also submits that under § 40-3.2-109, C.R.S., the Commission must consider the utility’s “potential” for cost-effective BE, which indicates the unknowns in determining BE adoption levels, costs, incentives, emissions reductions, and other factors that contribute to BE cost-effectiveness calculations, now and in the future.<sup>184</sup> The Company also argues that in the SI Proceeding, the Commission acknowledged that the mTRC test may not be the appropriate test of cost-effectiveness due to the influx of incentives from the IRA.<sup>185</sup>

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<sup>179</sup> Hearing Exhibit 144, 16: 10-11—17: 1 (Tables NCM-1, 2, and 3). *See* August 8, 2024 Tr., 44: 23-25—56: 1-3.

<sup>180</sup> August 8, 2024 Tr., 46: 8-12.

<sup>181</sup> August 8, 2024 Tr., 46: 13-16.

<sup>182</sup> Hearing Exhibit 144, Settlement Testimony Nick Mark, p. 16.

<sup>183</sup> Decision No. C23-0413, ¶ 262, issued in Proceeding No. 22A-0309EG.

<sup>184</sup> Public Service SOP at 15-16.

<sup>185</sup> Public Service SOP at 16, citing Decision No. C23-0413, ¶ 126.

120. Given this Proceeding is the Company's first BE Plan, and that BE is a new effort both for it and Colorado, the Company submits that it is premature for there to be repercussions for executing a BE portfolio that ultimately is not cost effective.<sup>186</sup> At some point, however, the Company agrees that it may be appropriate to incorporate repercussions for implementing a non-cost effective BE portfolio, such as employing incentives based on cost-effectiveness.<sup>187</sup> Public Service explains that the Commission is grappling with the determining the appropriate cost-effectiveness metric for BE across several proceedings, including the Clean Heat Proceeding, where it found that the record established that BE and DSM are "the most cost-effective clean heat resources."<sup>188</sup> Public Services submits that this (among other factors) makes it apparent that the Commission views BE overall as an effective and appropriate way to reduce emissions and achieve Colorado's greenhouse gas reduction policy objectives despite challenges in quantifying the costs and benefits associated with BE.<sup>189</sup> The Company highlights that the Settling Parties universally agreed that its BE portfolio and measures serve the public interests despite these same challenges.<sup>190</sup>

121. The Conservation Coalition, SWEEP, and WRA argue that rejecting the Agreement's BE portfolio because it is not cost-effective would contradict the Commission's Decision approving the BE budget and goals in the SI Proceeding.<sup>191</sup> They argue that the relevant statutes do not require that the Commission only approve cost-effective BE plans and that the Commission should refrain from applying DSM plan cost-effectiveness standards to BE plans, to

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<sup>186</sup> See August 8, 2024 Tr., 51: 6-13.

<sup>187</sup> August 8, 2024 Tr., 51: 19-23; 52: 6-10.

<sup>188</sup> Public Service SOP at 17-18, citing Decision No. C24-0397 at ¶ 121, Proceeding No. 23A-0392EG (mailed June 10, 2024).

<sup>189</sup> Public Service SOP at 18.

<sup>190</sup> *Id.*

<sup>191</sup> Joint SOP at 4-6.

which different statutory directives and cost-effectiveness factors apply.<sup>192</sup> They also argue that the Company overestimated the incremental cost of BE equipment for several measures, thereby significantly reducing the cost-effectiveness of the portfolio, and that had the Company used improved assumptions about participant costs and updated figures for the social cost of greenhouse gas emissions, that the result could be different.<sup>193</sup> They assert that the Environmental Protection Agency (“EPA”) has released revised social costs for greenhouse gas emissions incorporating recent scientific advances, that these new value are much higher than the current values used by the Company, and that if these new values were used the BE portfolio would be cost-effective in 2026.<sup>194</sup> For these reasons, they argue that the Commission should not put too much stock into the BE portfolio’s mTRC cost-effectiveness results.<sup>195</sup>

122. These parties argue that the concerns with the incremental cost assumptions in the Company’s cost-effectiveness analysis resulted in a provision of the Settlement Agreement that requires the Company to collect and report on actual installed costs of certain equipment in its BE portfolio, incorporate updated equipment costs in its technical assumptions, and to reflect these updated equipment costs in its cost-effectiveness analysis. This term is an appropriate step toward improving how the Company quantifies incremental costs for future cost-effectiveness testing.<sup>196</sup>

123. The Commission is concerned that while the Company originally indicated its BE measures would be cost-effective by 2026, Tables NCM-S-1, NCM-S-2, and NCM-S-3 show overall BE cost-effectiveness decreasing year over year. We direct the Company to file, as part of its 2026 SI, DSM Plan and Clean Heat Plan applications, an updated evaluation of, and

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<sup>192</sup> *Id.* at 6-8.

<sup>193</sup> Joint SOP at 8-10, citing Hearing Exhibit 500, 54: 1-6; 55: 4-20—57: 1-8.

<sup>194</sup> Joint SOP at 10-11.

<sup>195</sup> Joint SOP at 9.

<sup>196</sup> Joint SOP at 10, citing Hearing Exhibit 143 at 9 (¶ 11.2.1.2).

opportunities to improve, the BE program's cost-effectiveness. The Commission also recognizes that as data collection around BE costs and system impacts continue to improve, so will the accuracy of cost effectiveness calculations. Thus, the Commission agrees that the Settlement provision requiring the Company to collect, report on, and improve its calculations based on actual installed costs of certain equipment in its BE portfolio is an appropriate step to improving how the Company quantifies incremental costs for future cost-effectiveness testing.

## **II. ORDER**

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

1. The Unopposed Motion to Approve Comprehensive Settlement Agreement and Request for Waiver of Response Time filed May 30, 2024 ("Motion") is partially granted and the Unopposed Comprehensive Settlement Agreement filed May 30, 2024 ("Settlement Agreement" or the "Agreement") is approved, consistent with the discussion above.

2. The above-captioned Application is granted, as modified by the Settlement Agreement and this Decision, consistent with the above discussion. The Settlement Agreement is included with this Decision as Appendix A. Appendix A includes the correct attachment (Hearing Exhibit 145, Attachment MRS-6) and Hearing Exhibit 146, which is a copy of portion of a Settlement Agreement from Proceeding No. 23A-0242E that ¶ 11.3.4.4 of the Agreement incorporates.

3. Public Service shall file a compliance advice letter to implement the tariffs necessary to implement the approved Application, 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 will 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.

4. The 20-day time period provided by § 40-6-114, C.R.S., to file an Application for Rehearing, Reargument, or Reconsideration, begins on the first day following the effective date of this Decision.

5. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN MEETING AND COMMISSIONERS' WEEKLY MEETING  
September 11, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

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TOM PLANT

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Commissioners