

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

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IN THE MATTER OF THE VERIFIED)
APPLICATION OF PUBLIC SERVICE)
COMPANY OF COLORADO FOR)
APPROVAL OF ITS CERTIFICATE OF) PROCEEDING NO. 23A-0563E
PUBLIC CONVENIENCE AND)
NECESSITY FOR THE CONVERSION)
OF PAWNEE GENERATING STATION)
FROM COAL OPERATIONS TO)
NATURAL GAS OPERATIONS)

SETTLEMENT AGREEMENT

INTRODUCTION AND IDENTIFICATION OF PARTIES

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is filed on behalf of Public Service Company of Colorado (“Public Service” or the “Company”), Trial Staff (“Staff”) of the Colorado Public Utilities Commission (“Commission”), and the Natural Resources Defense Council (“NRDC”) and Sierra Club (collectively, the “Conservation Coalition”) (each a “Settling Party” and collectively the “Settling Parties”). Climax Molybdenum Company (“Climax”) does not join, but also does not oppose, this Settlement Agreement. The Colorado Office of the Utility Consumer Advocate (“UCA”) has not yet decided its position on this Settlement Agreement.

This Settlement Agreement is intended to represent a comprehensive resolution of Commission Proceeding No. 22A-0563E, which addresses Public Service’s Application

for a Certificate of Public Convenience and Necessity (“CPCN”) to convert the Pawnee generating station from coal to natural gas operations (the “Pawnee Conversion”) consistent with the Coal Action Plan approved by the Commission in Proceeding No. 21A-0141E (“Application”).

SETTLEMENT AGREEMENT

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

I. Approval of the CPCN Application.

The Settling Parties agree to recommend that the Commission approve the Company’s Application consistent with the changes required by the Settlement Agreement provisions set forth below.

II. Performance Incentive Mechanism (“PIM”).

- a. The Settling Parties agree that the Pawnee Conversion will be subject to a cost management PIM with the following structure and parameters:
 - i. The Settling Parties agree that the baseline for the PIM will be set at \$80 million with a cap of \$88 million subject to the Company bearing the burden to establish that extraordinary circumstances warrant recovery of any cost, including allowance for funds used during construction (“AFUDC”), above that amount. Such circumstances would necessitate a future request that the Commission reconsider the design and/or application of the cost management, timing, and/or unit performance PIMs.

- ii. The Settling Parties agree that the dead band for the PIM will be a symmetric five percent above and below the PIM Baseline.
 - iii. For any cost overruns above 105 percent of the PIM Baseline and up to the cap of \$88 million, the Company will be subject to an earnings reduction equal to 10 percent of those overruns, whereas, for any cost savings below 95 percent of the PIM Baseline, the Company would receive an earnings increase of 10 percent of those savings.
- b. The Settling Parties agree that the Pawnee Conversion will be subject to a timing PIM with the following parameters:
- i. If the Pawnee conversion is not complete by January 1, 2026, the Company will be subject to an earnings reduction of \$5,000 per day for each day, beginning after January 1, 2026. This earnings reduction is in addition to the potential non-recovery of incremental AFUDC incurred due to the delayed in-servicing of the project the cost of which is expected to exceed \$15,000 per day. This provision is not intended to extend the January 1, 2026 deadline in the Updated Settlement Agreement that the Commission approved in Decision No. C22-0459.
 - ii. If the Company can advance the conversion of Pawnee to be complete before May 31, 2025, the Company will receive an earnings increase of \$100,000. If the Company can advance the conversion of Pawnee to be complete before January 1, 2025, the Company will receive an earnings increase of \$250,000.

- c. The Settling Parties agree that the Pawnee Conversion will be subject to a unit efficiency PIM. The PIM will be based upon either the assumptions used in the Phase I Electric Resource Plan (“ERP”) modeling or an updated value calculated after the completion of the Pawnee Boiler Study (“Study”). For any updated value calculation, the Company will utilize the Study and unit dispatch assumptions to develop an average annual heat rate. The Company agrees to provide this calculation to Staff and confer on the methodology used to develop the baseline. This calculation will be completed no later than September 1, 2025. Testing will begin the first calendar year following in-servicing and continue for two additional years thereafter. If the actual unit performance calculation exceeds 105 percent of the baseline, the Company agrees to forgo any earnings increase resulting from section II(a) or II(b) in the associated year.
- d. Public Service will credit an amount equal to any earnings decrease it incurs under the PIMs to its electric retail customers, or charge electric retail customers for an amount equal to any applicable earnings increase the Company earns under the PIMs, as applicable, through a quarterly Electric Commodity Adjustment (“ECA”) filing, amortized over a 10-year period, after the of the Pawnee Conversion construction and accounting for such is complete. The Settling Parties agree to recommend that the Commission direct Public Service to implement any tariff changes necessary to effectuate the PIMs through a compliance advice letter.
- e. The Settling Parties agree that these PIMs are reflective of the unique circumstances of this application and should not be viewed as precedential.

The Settling Parties believe the PIMs above are generally consistent with the Commission's articulated principles for PIMs.

III. Operational Matters.

The Settling Parties agree that Public Service is responsible for operating, including dispatching, Pawnee in a prudent manner, and retains the discretion to do so as it deems warranted. The Settling Parties reserve the right to take any position in appropriate future Commission proceedings addressing such operations including annual ECA proceedings where such issues are analyzed.

IV. Timing of the Conversion.

The Settling Parties agree that Public Service will advance the Pawnee Conversion as soon as possible while maintaining system reliability, resource adequacy, and reasonable cost, but no later than January 1, 2026. The unit is currently expected to be out of service between 60 and 120 days. The Company will provide updated timeline expectations in its future reporting. If the outage persists beyond the currently expected timeline due to the conversion of the unit, the Company will provide an explanation in the subsequent ERP annual report and the subsequent ECA prudence review addressing the causes of the outage extension and impacts to customers, if any.

V. Reporting.

- a. Public Service commits to include project status updates for the Pawnee Conversion through its annual ERP reporting as filed with the Commission on March 31 of every year per Rule 3648(a). The reporting on the Pawnee conversion will include project accomplishments, any potential issues or

complications encountered, budget information, and project timeline updates as discussed in the Company's direct testimony.

- b. The Company also commits to file the information included in subparts (i) through (iv) within 90 days of the Commission Decision granting the CPCN in this proceeding, and the information listed in subpart (v) by September 1, 2024:
- i. permitting plan and timelines;
 - ii. breakdown of major tasks required to complete project including timeline for major task completion and expected completion dates;
 - iii. procurement schedule for major equipment;
 - iv. annual project budget detailed by FERC account; and
 - v. safety planning including:
 - A. fire protection and life safety drawings and details;
 - B. facility emergency communication plan and drawings; and
 - C. codes and standards drawings (specific to the new gas supply, interconnection, gas supply pipeline with gas treatment, natural gas burners, and associated equipment).

VI. Best Value Employment Metrics.

Consistent with Commission Rule 3102(f), 4 Colorado Code of Regulations 723-3 and § 40-2-129, C.R.S., although information regarding best value employment metrics was not known at the time the application was filed, Public Service will obtain the information regarding best value employment metrics specified in Commission Rule 3102(e) and § 40-2-129(1)(a)(I), C.R.S., from potential contractors through whatever means Public Service uses to select contractors for project construction. If one or more contracts are

awarded for the proposed project, then, within 45 days after the last contract is awarded, Public Service shall file in the above-captioned proceeding a status report that contains for each contract the information obtained from the contractor with which Public Service has entered into a contract (selected contractor) regarding how the selected contractor meets best value employment metrics.

GENERAL PROVISIONS

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

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

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

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

5. The Settling Parties agree to support, or not oppose, all aspects of the Settlement Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Settlement Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Settlement Agreement, it will take no formal action in any administrative or judicial proceeding that would have the effect, directly or indirectly, of contravening the provisions or purposes of this Settlement Agreement. However, except as expressly provided herein, each Settling Party expressly reserves the right to advocate positions different from those stated in this Settlement Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this Settlement Agreement or its terms and conditions.

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

7. This Settlement Agreement is an integrated agreement that may not be altered by the unilateral determination of any Settling Party. There are no terms,

representations or agreements among the parties which are not set forth in this Settlement Agreement.

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

9. There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

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

Dated this 26th day of October 2023.

Agreed on behalf of:

PUBLIC SERVICE COMPANY OF COLORADO

By: /s/ Jack W. Ihle

Jack W. Ihle
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Approved as to form:

By: /s/ Christopher M. Irby

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**ATTORNEY FOR PUBLIC SERVICE
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Agreed on behalf of:

TRIAL STAFF OF THE COMMISSION

By: /s/ Adam Gribb

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Approved as to form:

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