Decision No. R24-0396

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0356E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER AUTHORIZING IT TO MODIFY AND EXTEND ITS ELECTRIC QUALITY OF SERVICE PLAN THROUGH 2026.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
APPROVING SETTLEMENT AGREEMENT
WITH MODIFICATIONS AND
GRANTING MODIFIED APPLICATION**

Mailed Date: June 11, 2024

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I. STATEMENT AND SUMMARY[1]

1. This Decision partially grants the Joint Motion to Approve Settlement Agreement (Joint Motion) filed March 13, 2024; approves the Settlement Agreement filed March 13, 2024

[1] Headers are for ease of reference only.

(Settlement Agreement or Agreement) with modifications; grants the above-captioned Application (Application) as modified by the Agreement and this Decision; and closes this Proceeding.[2]

II. PROCEDURAL HISTORY[3]

2. On June 30, 2023, Public Service Company of Colorado (Public Service or the Company) initialed this Proceeding by filing the Application with testimony.

3. On August 9, 2023, the Commission deemed the Application complete and referred the matter for disposition to an administrative law judge (ALJ).

4. In addition to Public Service, the following entities are parties to this Proceeding: Colorado Public Utilities Commission Trial Staff (Staff); the Colorado Energy Consumers (CEC); the City of Boulder (Boulder); the City and County of Denver (Denver); Energy Outreach Colorado (EOC) and the Office of the Utility Consumer Advocate (UCA).[4]

5. Consistent with § 40-6-109.5(4), C.R.S., the ALJ extended the statutory deadline for a final Commission decision to issue by 130 days to August 23, 2024; scheduled a hybrid evidentiary hearing for April 2, 3 and 4, 2024; and established deadlines and procedures relating to that hearing.[5]

6. On March 13, 2024, Public Service filed the Joint Motion and associated Settlement Agreement to which Public Service, Staff, Denver, Boulder, and CEC (Settling Parties) are

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[2] In reaching this Decision, the Administrative Law Judge (ALJ) has carefully reviewed and considered all arguments and admitted evidence, including those discussed briefly or not at all. Although this Decision does not include significant discussion of Settlement Agreement terms to which no party objects, the ALJ has fully considered all relevant issues, including the impact on the public interest. Any requested relief not specifically granted is denied. In rendering this Decision, the ALJ has weighed the evidence and evaluated the credibility of all the witnesses and admitted hearing exhibits. *See Durango Transportation, Inc. v. Pub. Utilis. Comm'n.*, 122 P.3d 244, 252 (Colo. 2005); *RAM Broadcasting of Colo., Inc. v. Pub. Utilis. Comm'n*, 702 P.2d 746, 750 (Colo. 1985).

[3] Only the procedural history necessary to understand this Decision is included.

[4] Decision No. R23-0617-I at 9-10 (mailed September 13, 2023).

[5] Decision No. R23-0582-I at 4-5 (mailed August 31, 2023); Decision No. R23-0617-I at 9-14. The procedural schedule requires the parties to file proposed recommended decisions in lieu of Statements of Position (SOPs), which are treated as the parties' positions and arguments. Decision No. R23-0617-I at 13. Put differently, while not titled as SOPs, the ALJ treats the parties' proposed Recommended Decisions as SOPs.

signatories.[6] EOC takes no position on the Agreement and the UCA opposes portions of the Agreement.[7]

7. On March 22, 2024, the UCA filed a Motion to Strike Portions of the Rebuttal Testimony of Company Witness Peuquet (Motion to Strike), arguing that portions of this witness' Rebuttal Testimony (Hearing Exhibit 103) are legal argument that should be stricken.

8. On March 29, 2024, Public Service filed its Response to the UCA's Motion to Strike (Response to Motion to Strike).

9. On April 1, 2024, the ALJ converted the hybrid hearing to a fully remote hearing based on the parties' informal notice that no one would appear in person for the hearing.[8]

10. The ALJ held the evidentiary hearing as noticed on April 2 and 3, 2024.[9] All parties appeared. Before commencing the evidentiary portion of the hearing, the ALJ denied the UCA's Motion to Strike.[10] While the ALJ found that the UCA's Motion is not utterly without merit because the relevant testimony uses language referencing well-known legal principles, the ALJ found that the testimony does not make legal arguments based on those principles, and instead merely amounts to the Company's position on the issues.[11]

11. During the hearing, the following witnesses testified: Messrs. Jason Peuquet and Michael Renman (on behalf of Public Service); Ms. Erin O'Neill (on behalf of Staff); and Dr. Scott England (on behalf of the UCA). The following exhibits and the most recent versions of their associated attachments (including confidential, highly confidential, and executable attachments)

[6] Joint Motion at 2; Hearing Exhibit 105, Attachment JJP-4 at 1.
[7] Joint Motion at 2; Hearing Exhibit 801, 4: 21-22—5: 1-18.
[8] Decision No. R24-0200-I at 3 (mailed April 1, 2024).
[9] Because the parties' evidentiary presentations concluded on April 3, 2024, the ALJ vacated the April 4, 2024 hearing date.
[10] April 2, 2024 Hearing Transcript (4/2/24 Tr.), 8: 7-25—9: 1-5.
[11] *Id.* at 8: 12-22. The ALJ also explained that striking small portions of written testimony may ultimately create more confusion than it would help. *Id.* at 8: 25—9: 1-2.

were admitted into evidence during the hearing: Hearing Exhibit 100, Rev. 1 (Hearing Exhibit 100); Hearing Exhibit 101; Hearing Exhibit 102, Rev. 1 (Hearing Exhibit 102); Hearing Exhibits 103-105; Hearing Exhibit 106, Rev. 1 (Hearing Exhibit 106); Hearing Exhibit 107; Hearing Exhibit 108, Rev. 1 (Hearing Exhibit 108); Hearing Exhibit 110; Hearing Exhibits 300-302; Hearing Exhibits 500, 600, and 601; Hearing Exhibit 800, Rev. 1 (Hearing Exhibit 800); Hearing Exhibit 801, Rev. 1 (Hearing Exhibit 801); Hearing Exhibits 802-804; and Hearing Exhibit 900.[12]

12. On April 22, 2024, Public Service filed a proposed Recommended Decision (Joint Proposed Decision) on behalf of the Settling Parties. That same day, the UCA filed its proposed Recommended Decision (UCA's Proposed Decision).

13. EOC did not file a proposed recommended decision.

III. DISCUSSION AND FINDINGS

A. Relevant Law

14. The Commission has broad constitutional and statutory authority to regulate public utilities, including jurisdiction to enforce statutes affecting public utilities.[13] As relevant here, the Commission has authority to require utilities to meet service standards through a quality of service

[12] Hearing Exhibit 900 is a pdf list of pre-filed exhibits that the parties indicated they may offer into evidence during the hearing; it lists information necessary to identify the specific document being offered, (including exhibit number, file date, and filing party) as it appears in the administrative record. During the hearing, most exhibits were presented, offered, and admitted into evidence by administrative notice using the Excel version of Hearing Exhibit 900 with live links to each of the parties' pre-filed exhibits, as they appear in the administrative record. This means that, except as noted, the pre-filed exhibit and attachment identified by file date and filer in Hearing Exhibit 900 (as they appear in the administrative record) were taken into evidence in lieu of receiving an identical copy during the hearing. Hearing Exhibits 800 and 801 listed in Hearing Exhibit 900 were not admitted. Instead, revised versions of those exhibits (Hearing Exhibits 800 and 801, Rev. 1) were admitted and received electronically into the record via the UCA's box.com folder. However, the attachments to such exhibits, as listed in Hearing Exhibit 900, were admitted by administrative notice. The following exhibits not listed in Hearing Exhibit 900 were electronically received into evidence during the hearing: Hearing Exhibits 100, 106, 108, 800, and 801 (all tilted with "Rev.1" as noted above); and 110, 804 and 900. Administrative support staff added all exhibits (listed above) received into evidence electronically during the hearing to the record on April 3, 2024. Hearing Exhibit 109 was also added the record on April 3, 2024, but was not admitted into evidence.

[13] Colo. Const. art. XXV; §§ 40-1-103(1)(a)(I); 40-3-102; 40-7-101, C.R.S. *See Pub. Serv. Co. of Colo. v. Pub. Utilis. Comm'n*, 350 P.2d 543, 549 (Colo. 1960), *cert. denied*, 364 U.S. 820 (1960).

plan (QSP) based on its "very extensive and broad regulatory powers" over public utilities.[14] Indeed, Colorado public utilities must provide service "as shall promote the safety, health, comfort, and convenience" of its customers and the public, and that is in all respects "adequate, efficient, just and reasonable."[15] The Commission may fix just and reasonable standards, practices, and measurements for public utilities to follow, as well as "adequate and serviceable standards" to measure the "quality . . . [of] service furnished or rendered by any such public utility."[16] QSPs are a mechanism for the Commission to do this on a case-by-case basis, considering the unique facts and circumstances relevant to a particular utility.

15. Although the ALJ finds no authority or Commission precedent establishing baseline requirements for a QSP, as far back as 1996, QSPs have served the purpose of safeguarding ratepayers from potential or actual degradation in service quality arising from a public utility's merger with or acquisition of another company.[17] What is more, in 2019, the Commission agreed that "there is no Commission 'policy' supporting continuous improvement or positive financial incentives in QSPs."[18]

16. As with the Commission's exercise of any power granted to it, when determining the nature and scope of a QSP, the Commission must give the public interest "first and paramount

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[14] *See Pub. Serv. Co. of Colo.,* 350 P.2d at 549. *See also* Colo. Const. art. XXV; §§ 40-3-102, 40-7-101, C.R.S.

[15] § 40-3-101(2), C.R.S.

[16] § 40-4-108, C.R.S.

[17] *See e.g.,* Decision No. C96-1235 (mailed November 29, 1996) in Proceeding No. 95A-0531EG; Decision Nos. C00-393 (mailed April 24, 2000) and C01-1330 (mailed December 28, 2001) in Proceeding No. 99A-377EG; Decision No. R05-0313 (mailed March 17, 2005) in Proceeding No. 04A-046E; Decision Nos. C06-1303 (mailed November 6, 2006) and C06-1487 (mailed December 26, 2006) in Proceeding No. 05A-288E; Decision No. C09-1159 (mailed October 13, 2009) in Proceeding No. 09A-497EG; Decision No. R13-0734 (mailed June 18, 2013) in Proceeding No. 12A-778EG; Decision No. R15-1247 (mailed November 23, 2015) in Proceeding No. 15A-0662EG; and Decision No. R16-0058 (mailed January 22, 2016) in Proceeding No. 15A-0667G. Hereinafter, these Decisions are cited without the proceeding numbers and decision mail dates.

[18] Decision No. C19-0728, ¶ 17 (mailed September 3, 2019) in Proceeding No. 18A-0918G (hereinafter Decision No. C19-0728).

consideration."[19] In addition, § 40-2-108(3), C.R.S., expresses the General Assembly's intent that in all of its work, the Commission consider how best to provide equity, minimize impacts, and prioritize benefits to disproportionately impacted (DI) communities and address historical inequities, as possible.[20]

17. The proponents of an order bear the burden of proof by a preponderance of the evidence that their requested relief should be granted.[21] This standard requires the fact finder to determine whether the existence of a contested fact is more probable than its nonexistence.[22] The preponderance of the evidence standard requires substantial evidence, which is such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion.[23]

18. The Commission encourages settlement of contested proceedings.[24]

19. The ALJ assesses the Agreement's proposed QSP and the UCA's requested relief with these principles and legal standards in mind.

B. Factual Background

20. Public Service is a public utility that provides natural gas and electric service to more than 1.3 million residential, commercial, and industrial customers in Colorado.[25] Public Service has had QSPs in place since at least 1996.[26] The Company's QSPs establish minimum performance standards for its service, which if not met, require the Company to provide bill credits

[19] *Pub. Serv. Co. of Colo*., 350 P.2d at 549.

[20] Although the Commission has not yet promulgated rules to implement the referenced statutory intent in § 40-2-108(3), C.R.S., the ALJ considers and applies this statutory directive in rendering this Decision as practicable. *See also* § 40-2-108(3)(a)(II), C.R.S.

[21] § 24-4-105(7) C.R.S.; Rule 1500 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

[22] *Swain v. Colorado Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

[23] *City of Boulder v. Pub. Utilis. Comm'n.*, 996 P.2d 1270, 1278 (Colo. 2000), quoting *CF&I Steel, L.P.*, *v. Pub. Utilis. Comm'n*, 949 P.2d 577, 585 (Colo. 1997).

[24] Rule 1408, 4 CCR 723-1.

[25] Hearing Exhibit 100 at 9.

[26] *Id.* at 3.

to customers.[27] In late 2006, the Commission established a $50 bill credit amount to be paid to the affected customer(s) each time the Company failed to meet an established QSP performance threshold.[28] At the same time, the Commission also established an aggregate annual bill credit cap of $11.64 million for all QSP performance metrics; that QSP went into effect on January 1, 2007.[29] Those bill credit and cap amounts remained the same in the Company's subsequent QSPs. Most recently, the Commission approved the Company's QSP (current QSP) as a part of the Company's 2021 Phase I Electric Rate Case in Proceeding No. 21AL-0317E (2021 Rate Case) based on a Settlement Agreement (2021 Settlement Agreement) filed in that case.[30] That QSP extends through 2023.[31] The Commission's Decision approving the current QSP was one small piece of the significant 2021 Settlement Agreement resolving voluminous issues in the 2021 Rate Case.[32] Indeed, the Commission dedicated just two sentences to its discussion of the 2021 Settlement Agreement's QSP terms.[33] The Commission's findings and conclusions about the 2021 Settlement Agreement include no discussion or reference of the Agreement's QSP terms.[34] The 2021 Settlement Agreement did not propose changes to prior bill credit and cap amounts, and as such, in approving the 2021 Settlement Agreement's QSP provisions, the Commission did not consider or address issues surrounding a need to increase bill credit and cap amounts.[35]

[27] Decision No. C96-1235

[28] Decision Nos. C06-1303 (mailed November 6, 2006) (hereinafter Hearing Exhibit 802) and C06-1487 (mailed December 26, 2006) in Proceeding No. 05A-288E (hereinafter Decision No. C06-1487). *See* Hearing Exhibit 800, Attachment SEE-4; Joint Proposed Decision at 9-10; the UCA's Proposed Decision at 8.

[29] Hearing Exhibit 802 and Decision No. C06-1487. *See* Hearing Exhibit 800, Attachment SEE-4; Joint Proposed Decision at 9-10; the UCA's Proposed Decision at 8.

[30] Hearing Exhibit 108 at 15; 17; 55-56. Hearing Exhibit 108 is Decision No. C22-0178 (mailed March 24, 2022) in Proceeding No. 21AL-0317E in which the Commission approved the Company's current QSP and includes the 2021 Settlement Agreement at pages 33-75. *See* Hearing Exhibit 100 at 3.

[31] Hearing Exhibit 108 at 15.

[32] Hearing Exhibit 108 at 15.

[33] *Id.*

[34] *Id.* at 17.

[35] *See id.* at 17 and 55-56.

C. Findings as to Commission Jurisdiction

21. Public Service is a regulated utility subject to the Commission's jurisdiction and authority under title 40, Colorado Revised Statutes.[36] Given that this Proceeding involves establishing service standards and measurements for a public utility to follow and which will measure the utility's service quality, the ALJ finds that the Commission has specific jurisdiction over this matter.[37]

D. Unopposed Settlement Agreement Provisions[38]

22. As noted, the Settling Parties are Public Service, Staff, Denver, Boulder, and CEC.[39] EOC takes no position on the Agreement and the UCA opposes portions of the Agreement.[40] The Agreement is intended to be a comprehensive resolution of this Proceeding.[41] As explained below, the Agreement includes unopposed provisions relating to reporting, a public-facing interactive QSP map, use of actual premise data, and stakeholder engagement.[42] The Agreement also includes opposed provisions relating to equity and prospective inflationary increases to credits and caps; and provisions establishing performance metrics in the following categories: Census Block Group (CBG) System Average Interruption Duration Index (SAIDI) (collectively, CBG-SAIDI); Customer Complaints; Telephone Response Time; Customers Experiencing Multiple Interruptions (CEMI); Customers Experiencing Long Interruption Durations (CELI); and equity.[43]

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[36] Hearing Exhibit 100 at 8-9; Colo. Const. art. XXV; §§ 40-1-103(1)(a)(I), C.R.S.

[37] *Supra,* ¶¶ 14, 16 and 20.

[38] The Agreement includes numerous general provisions that are common in Commission settlement agreements. *See* Hearing Exhibit 105, Attachment JJP-4 at 9-12. This Decision does not outline each of those provisions, as unnecessary.

[39] Hearing Exhibit 105, Attachment JJP-4 at 1.

[40] *Id.*; Hearing Exhibit 801, 4: 21-22—5: 1-18.

[41] Hearing Exhibit 105, Attachment JJP-4 at 1.

[42] *Id.* at 5-9.

[43] *Id.* at 2-5.

23. The Agreement provides that the performance metrics and penalty caps therein will be evaluated and applied for each performance year.[44] Bill credits will be applied to customer bills during the following July billing cycle of a given performance year.[45]

24. The UCA has taken no position on the above Agreement terms, and thus, these Agreement terms are deemed unopposed.

25. During the hearing, Staff explained that the Agreement seeks to extend aspects of the current QSP relating to the mechanics necessary to implement it and that these details will be included in a revised tariff.[46] At the ALJ's direction, the Company prepared a proposed revised tariff (proposed tariff) intended to reflect the Settlement Agreement's changes to the current QSP, and aspects of the current QSP being extended.[47] During the hearing, the Company agreed that the proposed tariff requires several changes to correct inadvertent errors or clarify it.[48] With those changes, the Settling Parties agree that the proposed revised tariff is consistent with the Settlement Agreement.[49]

1. Reporting Provisions

26. The Agreement provides that to the extent possible, the Company will continue to submit annual QSP reports to the Commission using the existing QSP reporting format and recommended work plans based on current year reliability concerns which include service

[44] *Id.* at 2.

[45] 4/2/24 Tr., 85: 22-25—86: 1-4. *See* Hearing Exhibit 110 at 3.

[46] 4/2/24 Tr., 168: 16-25—170: 1-21.

[47] With one exception, the proposed tariff, Hearing Exhibit 110, is redlined to reflect changes compared to the Company's proposed tariff filed with its Direct Testimony, not compared to its existing tariff. April 3, 2024 Hearing Transcript (4/3/24 Tr.,) 6: 2-12. *See* Hearing Exhibit 110. Specifically, under the header "Bill Credit Adjustment," the $1.1 million figures listed next to "Customer Complaints" and "Telephone Response" on page two of Hearing Exhibit 110 should have been redlined to reflect that these figures are changed from $1 million to $1.1 million. *Id.* at 15: 18-25—16: 1-5. *See* Hearing Exhibit 110.

[48] 4/3/24 Tr., 19: 9-25—20: 1; 23: 25—25: 1-13.

[49] *Id.* at 28: 18-25—33: 1-17. Each of the Settling Parties clarified that to the extent that Hearing Exhibit 110 (the proposed tariff) could be viewed as modifying the Settlement Agreement, the Agreement controls over the proposed tariff. *Id.* at 28: 18-25—33: 1-17.

reliability remediation summaries.[50] The Agreement also requires the Company to provide the same detailed reliability reporting that it provides under the current QSP, as well as all annual CBG level data (including exclusions, through an executable spreadsheet).[51] In its annual QSP reports, Public Service will also report on CBG level SAIDI, Customer Average Interruption Duration Index (CAIDI), and System Average Interruption Frequency Index (SAIFI) values in both normalized and all-weather formats.[52] Public Service will also benchmark these values in normalized and all-weather formats against neighboring utilities.[53]

27. The Agreement provides that the Company must include the major event day, public damages, and bulk supply exclusions from QSP metric penalty calculations in its annual QSP reports.[54] Those annual reports are filed by April 1 of each year.[55] The Company will continue to report outage and reliability data for all outage and reliability events, even if the cause of those events is excluded for the purposes of calculating or triggering customer bill credits.[56]

28. The Agreement requires that in its annual QSP reports, Public Service provide data on the following reliability metrics by CBG for informational purposes: CEMI-3, CEMI-4, and CEMI-5; CELI-12, CELI-14, CELI-16, CELI-18, CELI-20, CELI-22, and CELI-24; and the electric service continuity and restoration Target Exceedance List by premise identification that Public Service includes in its current QSP reports.[57]

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[50] Hearing Exhibit 105, Attachment JJP-4 at 5-6. During the hearing, the Company explained that the items listed above are sections of the form used for its annual reporting on its current QSP report, and the Agreement provisions are intended to confirm that the Company will continue to report on these items. 4/2/24 Tr., 106: 1-13.

[51] *See* Hearing Exhibit 105, Attachment JJP-4 at 6; 4/2/24 Tr., 80: 17-25—81: 1-23.

[52] Hearing Exhibit 105, Attachment JJP-4 at 6.

[53] *Id.* During the hearing, the Company explained that the reference in the Agreement to "these values" is to CBG level SAIDI, CAIDI, and SAIFI values, as referenced in ¶ IV(b) of the Agreement (noted above). 4/2/24 Tr., 81: 24-25—82: 1-11.

[54] Hearing Exhibit 105, Attachment JJP-4 at 6.

[55] 4/2/24 Tr., 82: 12-17.

[56] Hearing Exhibit 105, Attachment JJP-4 at 6.

[57] *Id.* at 6-7. *See* Hearing Exhibit 108 at 15, 17, and 55-56.

29. Under the Agreement, the Company's annual QSP reports must include a narrative describing the completion status of reliability management activities for prior year work plans, (including a summary of previous year distribution feeder unavailability) as well as current year recommended work plans with an anticipated completion date for each activity in the work plan.[58] To accomplish this, the Company will include a "Feeder Report" in the QSP annual report identifying the thresholds for inclusion in the feeder unavailability summary.[59] In this report, the Company must disclose the system average feeder SAIFI, SAIDI, and customer minutes out (CMO), as well as the CMO threshold for a feeder's inclusion on the feeder performance improvement plan (FPIP).[60] Feeders that are candidates for inclusion in the FPIP must be highlighted in the annual report. The Company is required to provide the related workplans it has prepared in connection with the FPIP with the year of anticipated completion for each workplan.[61] This annual report will also include total FPIP-related expenses.[62]

30. In the Agreement, the Company also commits to working with Boulder to provide Boulder region monthly details previously included in annual QSP reports, in a format and process that is mutually agreeable to the Company and Boulder.[63]

31. The UCA does not oppose the above Agreement provisions.[64]

2. QSP Map

32. The Settling Parties recommend that the Commission approve Public Service's proposal to place an interactive service quality map (QSP Map) on its website.[65] That map will

[58] *Id.* at 7.
[59] *Id.*
[60] *Id.*
[61] Hearing Exhibit 105, Attachment JJP-4 at 7. *Id.*
[62] *Id.*
[63] *Id.*
[64] 4/2/24 Tr., 223: 10-22. *See* Hearing Exhibit 108, 4: 21-22—5: 1-2.
[65] Hearing Exhibit 105, Attachment JJP-4 at 7.

display CBG- level reliability data on the CEMI, CELI, and SAIDI performance metrics.[66] The map will be designed to allow users to toggle between metrics to review CBG-level data.[67] The Agreement also requires the Company to attempt to include a GIS layer with point aggregations of customers reflecting CEMI, CELI, and CMO performance metrics, with data filtering in place to meet the 15/15 limit for data privacy requirements.[68] The Company must disclose the nature of its attempt to include such a GIS layer in its QSP Map to the Commission in its next QSP application and to stakeholders as part of stakeholder engagement requirements in Section VII of the Agreement.[69] The Company must publish its QSP Map on its website that complies with these provisions by April 1, 2025.[70]

33. The Company explains that these Agreement terms, alongside the Agreement's reporting provisions, (above) are the result of extensive collaboration among the Settling Parties to strike an appropriate balance between data transparency and the resources required to collect, analyze and provide the required information.[71] The Company explains that the Agreement's QSP Map and reporting provisions will require it to invest a significant amount of time and resources, and that the provisions ensure that resources are efficiently leveraged to meet Staff's and other stakeholders' specific needs.[72]

34. The UCA does not oppose the above Agreement provisions.[73]

[66] *Id.* at 7-8.
[67] *Id.* at 8.
[68] *Id.*
[69] *See id.*; 4/2/24 Tr., 83: 19-25—84: 1-6.
[70] Hearing Exhibit 105, Attachment JJP-4 at 8.
[71] Hearing Exhibit 105, 25: 17-21.
[72] *Id.* at 27: 2-6.
[73] Hearing Exhibit 108, 5: 4-5; 4/2/24 Tr., 224: 1-7.

3. Premise Data

35. The Agreement requires that throughout this QSP plan period, the Company will use actual premise data available through its Outage Management System, including, as available, information received from its Advanced Metering Infrastructure meters to evaluate its performance on QSP metrics.[74]

36. The UCA does not oppose the above Agreement provisions.[75]

4. Stakeholder Engagement

37. The Agreement requires Public Service to meet with stakeholders, including the parties to this Proceeding, to discuss the next QSP that it will propose on or before October 1, 2025.[76] Public Service must provide a list of the metrics and performance threshold values that the Company plans to propose in its next QSP during this meetings.[77] As part of these stakeholder discussions, the Company must also address the potential for additional mapping of reliability-related data that is more granular than the CBG level for the next QSP that it proposes.[78]

38. In the Agreement, Public Service commits to consider including service and power quality issues in its next QSP, which would apply to issues affecting large customers, including interruptions, outages, momentary outages, harmonic distortion, and voltage sags and surges.[79]

39. The Agreement requires the Company to separately meet with Staff to discuss whether the public damages and bulk supply exclusions from all QSP calculations, as applicable,

[74] Hearing Exhibit 105, Attachment JJP-4 at 8.
[75] Hearing Exhibit 108, 5: 4-5; 4/2/24 Tr., 224: 8-13.
[76] Hearing Exhibit 105, Attachment JJP-4 at 8.
[77] *Id.*
[78] *Id.* at 8-9.
[79] *Id.* at 9.

should be continued going forward at least six months before the filing date for its next QSP plan application.[80]

40. The Agreement provides that during this QSP period, the Company will continue to make reasonable efforts to address individual customers' respective issues, needs, and interests relating to power quality.[81] The Company also agrees to commence a power quality review for one of CEC's members over a twelve-month period within three months of the Commission's Decision approving the Agreement.[82]

41. The Company submits that these Agreement terms are reasonable and in the public interest because they create opportunities to work with stakeholders to vet issues unique to large customers and allow for collaboration with stakeholders on the next QSP well before it is filed.[83] This, the Company asserts, may result in consensus on certain key elements and minimizing disputed issues in the next QSP.[84]

42. The UCA does not oppose the above Agreement provisions.[85]

5. Findings, Analysis, and Conclusions

43. The ALJ finds that the preponderance of the evidence establishes that the above Agreement terms reflect a just and reasonable compromise between the parties; are in the public interest; and are just and reasonable.[86] The reporting provisions provide needed transparency to keep the Commission, stakeholders, and the public informed about the quality of the Company's service, covering more than the minimum information to determine if the Company has met a

[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] Hearing Exhibit 105, 27: 1-16.
[84] *Id.* at 27: 12-16.
[85] 4/2/24 Tr., 224: 14-21.
[86] *See* §§ 40-3-101(2); 40-2-108(3)(b); 40-4-108, C.R.S.

performance threshold.[87] For example, the Company must report all outage and reliability data, even where the cause of those events is excluded under the Agreement's performance metrics and report its reliability management activities and work plans.[88] Such information puts outages and reliability issues in context, and will keep the Commission informed about the Company's efforts to manage or avoid such issues in the future. The QSP Map provisions create a new customer-facing tool that further increases transparency on the Company's service quality, which serves the public interest.[89] The Agreement's premise data provision helps ensure that the Company uses the most accurate information available in determining whether it has met the Agreement's performance thresholds.[90] The stakeholder engagement provisions encourage open and cooperative discussion between the Company and stakeholders about its next QSP application filing, which may ultimately result in less litigation in that proceeding.[91] For all these reasons, and because these provisions are unopposed, the ALJ approves the above Agreement provisions. That said, the ALJ adds requirements relevant to these provisions, as discussed below.[92]

E. Opposed Settlement Agreement Provisions

1. Prospective Inflation Adjustment for Bill Credits and Penalty Caps

44. The Agreement provides that the bill credits and maximum annual penalties for each of the below metrics will be updated to account for inflation moving forward, as measured by the Consumer Price Index for All Urban Consumers for the United States (federal CPI-U).[93]

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[87] Hearing Exhibit 105, Attachment JJP-4 at 5-7.

[88] *Id.* at 6-7.

[89] *Id.* at 7-8. *See Pub. Serv. Co. of Colo*., 350 P.2d at 549.

[90] Hearing Exhibit 105, Attachment JJP-4 at 8.

[91] *Id.* at 8-9.

[92] The ALJ adds requirements relating to stakeholder engagement, the Company's next QSP application filing, and requires the Company to ensure that its compliance tariff includes the changes discussed below.

[93] Hearing Exhibit 105, Attachment JJP-4 at 5. During the hearing, the Company explained that the CPI-U referenced in the Agreement is the published by the federal Bureau of Labor Statistics, which the Federal Reserve Economic Data (FRED) also relies upon in its CPI. 4/2/24 Tr., 69: 15-25—70: 1-21.

While the Agreement does not identify how often the referenced inflation adjustment will be made, the Company opined that this would be an appropriate item for the parties to discuss in stakeholder meetings before the Company files its next QSP application.[94] The Company also explained that any future inflationary adjustments would be based on inflation that occurs between the time that the Commission issues a final decision in this matter, and when the adjustment is made.[95] Staff generally agrees.[96]

a. Arguments

45. While the UCA supports an inflation adjustment for bill credits and penalty caps, it asserts that inflation adjustments should be measured based on the Denver Metropolitan Statistical Area Consumer Price Index (Denver CPI), which better reflects local price level changes.[97] In support, the UCA argues that numerous Commission rules requiring inflation adjustments use the Denver CPI.[98] The UCA submits that the Denver CPI is more appropriate because the Company's customers live in the area in which price levels are measured through the Denver CPI.[99] It submits that this would result in adjustments that more closely reflect customers' inflation experience.

46. Although the Company does not expect that using the Denver CPI would result in materially different results, it is concerned that this Index is confined to the Denver metro area and is based on narrower and more limited data than the Agreement's more established and commonly accepted indexing approach.[100]

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[94] 4/2/24 Tr., 71: 9-25—72: 1-2.

[95] *Id.* at 72: 11-25. The Company clarified that this may be based on monthly CPI data or annual CPI data, depending on when the final Commission decision is issued, meaning, it may not be precisely based on the actual date the final Commission decision is issued. *Id.* at 72: 15-25.

[96] *See id.* at 174: 13-25—175: 1-15.

[97] Hearing Exhibit 108, 5: 15-21.

[98] The UCA's Proposed Decision at 24, citing Rule 3412(m), 4 CCR 723-3, and Rules 4102(e), 4412(m), and 4551(f)(I) of the Commission's Rules Regulating Gas Utilities, 4 CCR 723-4.

[99] 4/2/24 Tr., 217: 16-23.

[100] Joint Proposed Decision at 41, citing 4/2/24 Tr., 217: 16-25—218: 1-23.

b. Findings, Analysis, and Conclusions

47. For the reasons discussed, the ALJ finds the UCA's arguments persuasive, and modifies the Agreement so that the required inflationary adjustments use the Denver CPI. The General Assembly has expressed its statutory intent to use this same index in other contexts when requiring utilities to make inflationary adjustments.[101] For example, investor-owned utilities must make inflation adjustments to flat charges for the energy assistance program included in customers' bills using the Denver CPI.[102] The General Assembly directed that the Denver CPI index be used despite the fact that not all regulated utilities serve the Denver metro area. Similarly, the Commission has incorporated this statutory intent through numerous Rules that use the Denver CPI for utility inflation adjustments, even though not all regulated utilities serve the Denver metro area.[103] By requiring the Denver CPI be used, the ALJ defers to the General Assembly's and the Commission's determinations on this issue.

48. Because the Agreement is silent as to the mechanics of the required inflation adjustment, the ALJ modifies the Agreement (to the extent necessary) to require that the first inflation adjustment be made in the Company's next QSP application proceeding, with continuing adjustments moving forward. For the same reasons, as part of the stakeholder engagement contemplated under Section VII(a) of the Agreement, the Company is required to discuss the specifics of the future inflation adjustments, including the mechanics necessary to implement this provision.

[101] *See e.g.,* § 40-8.7-105.5(1)(b)(III), C.R.S.
[102] § 40-8.7-105.5(1)(b)(III), C.R.S.
[103] *See e.g.,* Rules 3205(b)(II), 3412(m), 4 CCR 723-3, and Rules 4102(e), 4412(m), and 4551(f)(I), 4 CCR 723-4.

2. CBG-SAIDI Performance Metric, Bill Credit, and Penalty Cap

49. CBG-SAIDI evaluates reliability as measured by the average duration of interruptions encountered by customers residing in each CBG in the Company's service territory.[104] For the CBG-SAIDI metric, the Agreement requires the Company to provide a $55 individual bill credit to customers in CBGs that encounter poorer reliability than the performance threshold, as measured in total minutes per customer, per year.[105] The $55 bill credit represents a $5 increase from the current QSP, which is a ten percent inflation adjustment from when the Commission approved the Company's current QSP.[106] The annual penalty cap for this performance metric is $7.73 million.[107] This represents a $666,000 increase from the current QSP, which is a 9.43 percent inflation adjustment from the current QSP's $7.064 million cap for the predecessor metric.[108]

50. The Company will set a minimum performance threshold of 486 minutes that reflects the 33 CBGs in the Company's service territory with the poorest reliability ratings under the SAIDI-Ordinary Distribution Interruptions (SAIDI-ODI) based on 2022 data.[109] These 33 CBGs comprise 10,312 electric customers. This CBG equivalency assumes any CBGs with 15 or less customers are combined into the nearest adjacent CBG calculations.[110]

51. The CBG-SAIDI metric excludes major event day interruptions calculated at the system level, public damage interruptions, transmission level bulk supply interruptions, and

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[104] Hearing Exhibit 105, 13: 6-9.
[105] Hearing Exhibit 105, Attachment JJP-4 at 2.
[106] 4/2/24 Tr., 153: 13-15; 156: 14-20.
[107] Hearing Exhibit 105, Attachment JJP-4 at 2.
[108] 4/2/24 Tr., 153: 19-25—154: 1-4; Hearing Exhibit 801, 8: 11-13. *See* Hearing Exhibit 802 at 3. When it was first established in 2006, this metric was referred to as the Reliability Warning Threshold (RWT) metric. *See* Hearing Exhibit 802 at 3. The current QSP refers to this as the SAIDI-ODI for Established RWT by Operating Region (collectively, SAIDI-ODI for RWT). *See* Hearing Exhibit 105, Attachment JJP-4 at 3.
[109] Hearing Exhibit 105, Attachment JJP-4 at 2.
[110] *Id.*

outages initiated pursuant to wildfire mitigation activities.[111] The metric will not use prior exclusion categories of SUBI (substation interruption), ECATI (extraordinary catastrophic interruption), EGOVI (extraordinary governmental interruption), EMERGI (extraordinary emergency-related interruption), EPLANI (extraordinary planned outage interruption), ESAFTI (extraordinary safety-related interruption), EVANI (extraordinary vandalism interruption), or EPUCI (extraordinary PUC-directed interruption).[112] During the hearing, the Company confirmed that although these outage categories are excluded from calculating success or failure under the performance metric, the Company will report on these categories through its annual QSP report.[113]

52. In support of these Agreement terms, the Company submits that the performance threshold reflects between one and two percent of all CBGs in the Company's service territory and appropriately recognizes the need to focus on CBGs encountering the greatest reliability challenges while avoiding an overly punitive outcome.[114] The Company also asserts that these Agreements terms recognize that the Company should not be financially penalized for engaging in wildfire mitigation or due to circumstances outside of its control (such as natural disasters, extreme weather, criminal activity, and bulk supply conditions from neighboring transmission providers).[115] The Company submits that this metric incents it to address reliability challenges in areas that are most impacted by service disruptions, and to work to ensure that all CBGs can meet or exceed the performance thresholds over time.[116]

[111] *Id.* at 3.

[112] *Id. See* 4/2/24 Tr., 93: 19-24 (SUBI are interruptions that originate from interruptions inside a substation); 93: 25—94: 1-7 (ECATI are interruptions caused by major environmental events); 94: 8-12; 95: 13-19 (EMERGI involves de-energizations performed due to emergencies); and 94: 23-25—95: 24.

[113] *See* 4/2/24 Tr., 92: 17-25—93: 1-18.

[114] Hearing Exhibit 105, 15: 4-10.

[115] *Id.* at 15: 10-15.

[116] *Id.* at 15: 18-23.

a. Arguments

53. The UCA objects to the Agreement's $55 bill credit and $7.73 million annual penalty cap because these amounts do not reflect inflation since the initial $50 bill credit and $7.064 million penalty cap were put in place in 2007.[117] The UCA recommends that the bill credit be increased to $78.69, and the maximum annual penalty cap be increased to $11,117,961.[118] These amounts reflect inflation from when the bill credit and penalty cap amounts were established to 2023, using the Denver CPI.[119]

54. In support, the UCA explains that from 2005 to 2023, inflation increased prices by 67.42 percent, and that from 2007 to 2023, inflation increased prices by 57.39 percent.[120] The UCA argues that increasing the bill credits and penalty caps to adjust for inflation since they were put into effect will align the current value of the bill credits and penalty caps with the real value of the same when they were established.[121] It submits that the Agreement inappropriately excludes 15 to 17 years of inflation that has occurred since the bill credits and caps were established.[122] This weakens the real value of the bill credits and penalty caps, which harms customers while benefiting the Company.[123]

55. The UCA highlights that while ratepayers have been subject to increases in rates that incorporate inflation, the real value of the Company's commitments to service quality has not similarly kept pace.[124] The UCA asserts that it is undisputed that the bill credits amounts have a

[117] *See* 4/2/24 Tr., 210: 12-17; 210: 20-23; Hearing Exhibit 800, 5: 3-4; 8: 7-10; Hearing Exhibit 801, 6: 6-11. *See also,* Hearing Exhibit 802 at 3.
[118] 4/2/24 Tr., 211: 6-10; 211: 20-23.
[119] *See* Hearing Exhibit 800, 8: 7-16—10: 1-8.
[120] *Id.* at 9: 1-3 (Table SEE-4).
[121] The UCA's Proposed Decision at 21.
[122] *Id.*
[123] *Id.*
[124] *Id.*, citing 4/2/24 Tr., 43: 9-25—44: 1-14.

lower real value now than when they were established.[125] It explains that because the Agreement's inflation adjustments only account for inflation since 2022, the resulting bill credits and penalty caps do not reflect the real value of the bill credits and penalty caps at the time they were first established.[126] Put differently, the proposed credits and caps are worth less than those established in 2006 or 2007. The UCA argues that is unreasonable from a customer's perspective to be subject to rate increases in line with inflation while the Company enjoys less risk and pays less on a real value basis.[127] If ratepayers have to pay increased rates due to inflation, the Company should have a similar responsibility with the credits and penalties that are intended to promote service quality.[128] It argues that if QSP penalties are intended to effectively encourage the Company to provide quality service, their real values should be maintained or their influence will be diminished.[129]

56. The UCA explains that under the current QSP, the Company's annual cap for bill credits associated with failing the Customer Complaint, Telephone Response Time, CEMI, and CELI performance metrics is $1 million each, and $7.064 million for the CBG-SAIDI metric.[130] Thus, under the current QSP, the Company's annual QSP bill credit risk is $11.064 million. The UCA highlights that from 2013 to 2022, the Company paid bill credits for failing to meet several (but not all) QSP minimum performance metrics.[131] The Company did not meet or exceed the maximum bill credit amount for any of the performance metrics in that ten-year time frame.[132]

[125] *Id.* at 21-22, citing 4/2/24 Tr., 41: 6-17.
[126] *Id.* at 22.
[127] *Id.* at 21-22, citing 4/2/24 Tr., 74: 1-7.
[128] *Id.* at 22.
[129] *Id.* at 22-23.
[130] Hearing Exhibit 800, at 7 (Table SEE-2). In the current QSP, CEMI is referred to as ECT; CELI is referred to as ERT; and CBG-SAIDI is referred to as SAIDI-ODI for RWT. *See id.* and Hearing Exhibit 802.
[131] Hearing Exhibit 800 at 7: 1-5 (Table SEE-3), citing Attachment SEE-3 to Hearing Exhibit 800.
[132] *Id.*

57. The UCA disputes the Company's and Staff's assertions that it is suggesting that inflation adjustments be made in "isolation" and "doesn't take into context that whole concept in which prices and revenues are changing in real-time."[133] To the contrary, the UCA asserts that by shielding the bill credits and caps from the inflation that has impacted every other aspect of the Company's business and ratepayers' economic realities, the Settlement Agreement isolates bill credits and penalty caps.[134]

58. The UCA disputes arguments suggesting that increasing bill credits and penalty caps here somehow impact the Commission's prior approval of the current QSP amounts. It explains that the Commission allowed the current QSP to be continued as part of the Company's complex rate case in which the QSP was a small part, and that attempts to recast that as approving any specific component of the current QSP is both misguided and inaccurate.[135]

59. The UCA notes various Colorado state laws employ inflation adjustments for damages accounting for inflation since the effective date of the limitation, and that several Commission rules require inflation adjustments (using the Denver CPI).[136] The UCA highlights that in the past, where statutes have directed the Commission to make inflation adjustments, the Commission increased an amount by 145 percent, and nearly all of the increase was due to inflation over the preceding 30 years where the amount was constant.[137] It submits that the Commission should use a similar inflation adjustment method to adjust bill credits and penalty caps here.[138] In

[133] The UCA's Proposed Decision at 22, quoting 4/2/24 Tr., 88: 23-25; 158: 1-25—159: 1-6.
[134] *Id.*
[135] *Id.* at 23, citing Hearing Exhibit 105, 12: 14-15; 4.2/24 Tr., 40: 6-10; Decision No. C22-0178, ¶ 30 (which is Hearing Exhibit 108).
[136] *Id.* at 24, citing, for example, §§ 44-3-801, 13-21-102.5, 13-21-203.7, C.R.S.; Rule 3412(m), 4 CCR 723-2 and Rules 4102(e), 4412(m), 4551(f)(I), 4 CCR 723-4.
[137] *Id.*, citing House Bill 20-1293; § 29-11-102(2)(f)(II), C.R.S.; Decision No. C20-0690, ¶¶ 31-32 (mailed xxx) in Proceeding No. 20M-0337T.
[138] *See id.*

support of its arguments, the UCA also relies on the Commission's duty to determine matters that are within the public interest and its authority to ensure the final result is just, reasonable, and in the public interest.[139]

60. The UCA does not object to the remaining CBG-SAIDI Agreement provisions.[140]

61. In response, the Company argues that the UCA's inflation recommendations are contrary to Commission decisions that have maintained the penalty caps and maximum annual bill credits over the years, most recently in the 2021 Rate Case.[141] The Company argues that the UCA's recommendations would render the QSP unduly punitive considering the QSP's asymmetric penalty-only structure.[142] It asserts that the UCA's arguments disregard several important considerations, including: improvements in service quality over the years; the unprecedented and increasing demands on the Company's electric distribution system (due to growth, beneficial and transportation electrification, and increased distributed energy resource adoption); and the many customer benefits associated with the Agreement (such as enhanced bill credits for customers in DI Communities, a bill credit adder for the CEMI metric, the customer-centered CBG-SAIDI metric and associated bill credits, and current and forward-looking inflation adjustments).[143] The Company submits that the proposed bill credits and caps represent meaningful disincentives to the Company, as supported by multiple Commission decisions maintaining these values, and that the UCA has not refuted this through credible evidence.[144]

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[139] *See id.*, citing *Caldwell v. Pub. Utilis. Comm'n*, 692 P.2d 1085, 1089 (Colo. 1984); Decision No. R15-1245, ¶ 33 (November 25, 2015) in Proceeding No. 15R-0325E.

[140] 4/2/24 Tr., 211: 23-25—212: 1-7.

[141] Joint Proposed Decision at 36, citing Hearing Exhibit 108; Hearing Exhibit 103, 22: 1-20—23: 1-6.

[142] *Id.*

[143] *Id.*, citing 4/2/24 Tr., 76: 22-25—78: 1-4; 78:21-25—79: 1-14; Hearing Exhibit 103, 31: 1-25—34: 1-8; Hearing Exhibit 105, 19: 1-22—20:1-2.

[144] Joint Proposed Decision at 37, citing Hearing Exhibit 103, 22: 1-20—23: 1-6.

62. The Company argues that the UCA's recommended inflation adjustments run afoul of the matching principle, and retroactive and single-issue ratemaking.[145] It asserts that the UCA's inflation recommendation violate retroactive ratemaking and the matching principle because it would reach back almost two decades to update established amounts or thresholds based on past economic developments, which were common knowledge when the Commission approved such amounts in numerous QSP proceedings.[146] It asserts that the UCA's inflation recommendations would make an isolated adjustment for past inflation in a manner that disregards and is inconsistent with how the Company generally recovers the costs associated with providing service, contrary to the prohibition against single-issue ratemaking.[147] The Company also argues that the UCA's inflation recommendations violate the Commission's performance incentive mechanism (PIM) principle that PIMs should not be excessively punitive or lucrative.[148]

63. Staff submits that the Agreement should be evaluated in a holistic manner, rather than by focusing on particular elements or adjustments in isolation.[149] Staff believes the proposed bill credits and penalty amounts are reasonable from the customer's perspective because there have been modifications over time to the 2007 QSP; and the Agreement modifies other aspects of the QSP to benefit customers.[150]

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[145] *Id.* at 38.

[146] *Id.*, citing *Silverado Communications Corp., v. Pub. Utilis. Comm'n*, 893 P.2d 1316, 1321 (Colo. 1995).and Hearing Exhibits 106 to 108, and 802 to 803.

[147] *Id.* at 38-39, citing Hearing Exhibit 103, 22: 14-20—23: 1-6.

[148] *Id.* at 39, citing Decision No. C22-0459 at ¶ 141 (mailed August 3, 2022) in Proceeding No. 21A-0141E; Decision No. C22-0270 at ¶ 40 (mailed June 2, 2022) in Proceeding No. 21A-0096E; Decision No. C21-0017 at ¶ 139 (mailed January 11, 2021) in Proceeding No. 20A-0204E.

[149] *Id.* at 39-40.

[150] *See* 4/2/24 Tr., 172: 7-25—173: 1-3.

b. Findings, Analysis, and Conclusions

64. For the reasons discussed, the ALJ is persuaded that the Agreement's individual bill credit amounts should be increased, and that it is unnecessary to increase the Agreement's maximum annual penalty cap amounts for all the Agreement's performance metrics.[151]

65. The preponderance of the evidence establishes that the Company's residential electric customers pay more now for electric service than in 2006 when the bill credit and penalty caps were established, based at least in part, on inflationary adjustments to the Company's cost of service incorporated into its rates.[152] Indeed, during the hearing, the Company agreed that it recovers increases to its cost of service caused by inflation (among other factors) when it obtains a rate increase, up to the inflation as of the relevant test year.[153] Since 2007, the Company has received numerous rate increases that include the inflationary impacts on its cost of service.[154] Staff estimates that over the last 15 years, the Company's rates have increased at a rate slightly lower than the rate of inflation.[155] As measured by the Denver CPI, inflation increased prices by 57.39 percent from 2007 to 2023.[156] As such, there can be no doubt that the customer impact and real value of a $50 or $55 bill credit today is less than it was in prior years. The Agreement's $55 bill credit does not consider the higher prices that customers pay for electric service, (whether due to inflation or other reasons), and the impact that such a credit has on customers whose electric service fails to meet minimum standards.[157] The Agreement includes other provisions that, to a

[151] The UCA makes the same arguments to increase the Agreement's $55 individual bill credit amounts and maximum annual bill credit caps for all the performance metrics in the Agreement, and the Company responds with the same arguments. The ALJ addresses these arguments here rather than repeat the same analysis later.

[152] *See* 4/2/24, 171: 24-25—1-6.

[153] *Id.* at 74: 1-13.

[154] *Id.* at 74: 21-25—75: 1-5; 171: 5-18.

[155] *Id.* at 176: 10-18.

[156] Hearing Exhibit 800, 9: 1-3 (Table SEE-4).

[157] This remains the case when considering the bill credit as an inconvenience payment, rather than an attempt to compensate customers for economic values associated with poor service quality.

certain degree, are more stringent than prior standards, and provide added benefits to customers, including customers in DI communities and customers experiencing consecutive years of long duration interruptions.[158] While such provisions benefit customers, on balance, they do not negate or nullify the decrease in the real value of the bill credits that customers have experienced since the credits were established. And although the Company has experienced greater demand since the bill credits were established due to growth and other changes in system demands, it is able to recover prudently incurred expenses associated with those changes and receive increased revenue (*e.g.*, from growth). All of this is built into the higher rates that customers are already paying. What is more, the record lacks sufficient evidence to establish that these types of changes negatively impact the Company's ability to maintain adequate service and meet the Agreement's performance metrics. To the contrary, the Company's QSP performance over the last ten years tends to show that the Company has handled these changes well.[159] Considering the Agreement as a whole and the entire record, and for the reasons discussed above, the ALJ concludes that the Agreement's proposed individual $55 bill credit is unjust and unreasonable from a customer perspective. As such, the Agreement's proposed $55 bill credit is rejected.

66. In determining an appropriate bill credit amount, the ALJ considers the Agreement and record as a whole; inflation; the impact of bill credits on customers; the impact of poor utility service on customers (measured by the Agreement's metrics); the Agreement's minimum utility performance thresholds; and other factors, such as growth on the Company's system, other changes in system demands, (such as those associated with increased beneficial electrification) and the Commission's policy to encourage settlement.[160] As measured by the Denver CPI, from 2007 to

[158] Hearing Exhibit 105, Attachment JJP-4 at 2-5.
[159] *See* Hearing Exhibit 800, 7: 1-5 (Table SEE-3); Hearing Exhibit 800, Attachment SEE-3.
[160] *See* 4/2/24 Tr., 78: 21-25—79: 1-14. This determination applies to all performance metrics in the Agreement that allow for a $55 bill credit.

2023, inflation increased prices by 57.39 percent.[161] Using the Denver CPI to adjust for inflation, the bill credit would be $78.69. To balance the numerous factors mentioned above, the ALJ does not adjust the bill credit to this amount. With these factors in mind, the ALJ finds that it is appropriate to increase the bill credit by $15, resulting in a $70 bill credit for customers not in DI communities. A $70 bill credit provides a more meaningful credit to customers who experience service that fails to meet minimum performance thresholds, particularly in light of the increased prices that customers pay for electric utility service and the specific performance thresholds. This amount is not intended to compensate customers for economic values associated with poor utility service but is compensation for the inconvenience and associated difficulties and frustrations surrounding poor utility service. This higher amount also represents the Company's acknowledgement directly to customers of sub-par service, and its commitment to do better. For the reasons discussed, the ALJ finds that a $70 individual bill credit amount serves the public interest and is just and reasonable. As such, the ALJ approves a $70 bill credit for individual customers who are not in DI communities and who experience service that fail to meet the Agreement's performance standards. This amount replaces all the Agreement's $55 bill credit amounts for individual customers but does not impact bill credits in the Agreement that are provided proportionately to customers at large.

67. Turning to the annual maximum bill credit caps (or penalties), for the reasons discussed, the ALJ declines to increase those amounts at this time. In so doing, the ALJ notes that it may be appropriate in the future to increase these amounts, depending on the Company's future QSP performance. Over the last ten years, the Company's QSP performance demonstrates that there is no need to increase the overall maximum bill credit caps to incent the Company to provide

[161] Hearing Exhibit 800, 9: 1-3 (Table SEE-4).

adequate service.[162] Specifically, in the 2013-2022 timeframe, the Company did not meet or exceed the annual maximum bill credit caps for any QSP performance metric, nor did it even come close to reaching the $11.064 million annual maximum bill credit under the current QSP.[163] Indeed, in the ten-year period from 2013 to 2022, the Company paid customers a total of $6,474,444 in bill credits.[164] That amount accounts for all bill credits associated with failing to meet any QSP performance metric in that ten-year period.[165] Even in 2021 (the Company's worst performance year in that ten-year span), it paid $1,314,523 in total bill credits for all QSP performance metrics.[166] This amounts to approximately 10 percent of the maximum annual bill credit cap, which is not significant given that 2021 was the Company's worst performance year in a decade. Given that the Company's annual performance results between 2013 and 2022 have resulted in an average annual payout of only 5.8 percent of the total threshold cap, increasing the bill credit cap is unlikely to change the Company's behavior.[167] Even so, the Agreement increases the annual maximum bill credit cap for each performance metric, resulting in a total maximum annual bill credit of $12.13 million.[168] This higher maximum annual bill credit allows room for the increased $70 bill credit and more stringent performance thresholds given the Company's past QSP performance.[169] For all these reasons, the ALJ concludes that the preponderance of the evidence

[162] *See id.* at 7: 1-5 (Table SEE-3); Hearing Exhibit 800, Attachment SEE-3.

[163] Hearing Exhibit 800, 7: 1-5 (Table SEE-3); Hearing Exhibit 800, Attachment SEE-3.

[164] Hearing Exhibit 800, 7: 1-5 (Table SEE-3); Hearing Exhibit 800, Attachment SEE-3.

[165] Hearing Exhibit 800, 7: 1-5 (Table SEE-3), Hearing Exhibit 800, Attachment SEE-3.

[166] Hearing Exhibit 800, 7: 1-5 (Table SEE-3), Hearing Exhibit 800, Attachment SEE-3.

[167] Hearing Exhibit 800, 7: 1-5 (Table SEE-3), Hearing Exhibit 800, Attachment SEE-3.

[168] This ALJ calculates the total $12.13 million annual maximum bill credit by adding the Agreement's maximum annual bill credit amounts as follows: $7.73 million for the CBG-SAIDI metric; $1.1 million for the Customer Complaint metric; $1.1 million for the Telephone Response Time metric; $1.1 million for the CEMI metric; and $1.1 million for the CELI metric. Hearing Exhibit 105, Attachment JJP-4 at 2-4.

[169] As discussed later, the ALJ is also increasing the individual bill credit amounts for customers in DI communities. As the record does not delineate the degree to which the Company's last ten years of bill credit payouts have been to customers in DI communities, the record does not shed light on whether increasing bill credits for customers in DI communities will cause the Company to exceed the maximum annual bill credit amounts. As such, for this additional reason, it may be appropriate to consider a higher annual maximum bill credit cap in the future after evaluating the Company's QSP performance and aggregate annual bill credit payouts to customers in DI communities.

establishes that increasing the Agreement's maximum annual bill credit amounts is not necessary to incent the Company to provide adequate, just, and reasonable service that promotes the public health, safety, comfort and convenience, as measured by the QSP's metrics.

68. To the extent that the UCA argues that the maximum bill credit cap should be increased to incent the Company to continuously improve its service, the ALJ rejects this argument, as there is no Commission policy supporting continuous improvement.[170] Indeed, were that the case, QSPs may have routinely included positive financial incentives for utilities to exceed performance thresholds. Such is not the case. Rather, QSPs have traditionally focused on safeguarding customers from degradation in service.[171]

69. Many of the issues that the Company raises that tie into the increased financial risk associated with increased maximum penalty caps are not at issue, because the maximum annual penalty caps remain the same as in the Agreement. Nevertheless, in an abundance of caution, the ALJ addresses and rejects the Company's arguments that the approved increase to the individual bill credit amount is retroactive ratemaking, single-issue ratemaking and violate matching, and PIM principles.

70. Applying retroactive ratemaking, single-issue ratemaking, the matching principle and PIM principles here is akin to attempting to fit a square peg in a round hole because this Proceeding does not establish or impact rates; does not involve the Company's cost of service; and does not establish a PIM. The prohibition against retroactive ratemaking arises out of the Commission's exercise of its legislative function. Specifically, because the Commission exercises a delegated legislative function when engaging in ratemaking, Colorado's constitutional

[170] Decision No. C19-0728, ¶ 17.

[171] *See e.g.,* Decision Nos. C96-1235, C00-393, C01-1330, R05-0313, C06-1303, C06-1487, C09-1159, R13-0734, R15-1247, R16-0058, and C19-0728, ¶ 17.

prohibition against retrospective legislation in article II, § 11, Colo. Const. applies to ratemaking.[172] As this Proceeding does not involve the Commission's exercise of its ratemaking function, the prohibition against retroactive ratemaking simply does not apply. The Commission exercises its quasi-judicial function in this Proceeding because it determines specific parties' obligations based on the application of existing legal standards or policy considerations to past or present facts developed at a hearing conducted for the purpose of resolving the interests in question.[173]

71. Assuming *arguendo* that the prohibition against retroactive ratemaking applies here, the Company's argument still fails. Article II, § 11, Colo. Const. prohibits legislation that "'takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already passed.'"[174] In the context of utility regulation, a charge is retrospective and constitutionally prohibited if its connected to a utility's past performance.[175] The revised bill credit does not impair a vested right or impose a new duty with respect to past transactions because it only applies to the Company's future performance under the QSP and is not based on the Company's past conduct or performance. As such, the revised bill credit is not unlawful retroactive ratemaking. [176]

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[172] *Colo. Office of Consumer Counsel v. Pub. Serv. Co.*, 877 P.2d 867, 870 (Colo. 1994). This legislative function is delegated to the Commission per Colo. Const. art. XXV. *Silverado,* 893 P.2d at 1319.

[173] *Cherry Hills Resort Dev. Co. v. Cherry Hills Village*, 757 P.2d 622, 625-26 (Colo. 1988). For example, the Commission applies §§ 40-3-101(2), 40-4-108, C.R.S., other law discussed herein, and policy considerations to past or present facts developed at the evidentiary hearing in this matter to decide whether to approve the Settlement Agreement and impose the obligations therein on the Company.

[174] *Colo. Office of Consumer Counsel*, 877 P.2d at 870, quoting *Moore v. Chalmers-Galloway Live Stock Co.*, 10 P.2d 950, 952 (Colo. 1932) and *Denver South Park & Pacific Ry. Co. v. Woodward*, 4 Colo. 162, 167, (1878).

[175] *See Colo. Office of Consumer Counsel*, 877 P.2d at 870, citing *Peoples Natural Gas v. Pub. Utilis. Comm'n*, 590 P.2d 960 (Colo. 1979).

[176] *See Colo. Office of Consumer Counsel*, 877 P.2d at 870. *See e.g., Colo. Energy Advocacy Office v. Pub. Serv. Co.,* 704 P.2d 298, 305 (Colo. 1985).

72. As its name implies, the single-issue ratemaking principle applies to ratemaking proceedings. Because this is not a ratemaking proceeding, the single-issue ratemaking principle does not apply.[177] A closer look at the single-issue ratemaking principle confirms that it has no work to do here. This principle relates to the Commission's preference to review all of a utility's expenses in a ratemaking proceeding (rather than a single expense) in determining a utility's cost recovery, which helps avoid over- and under-recovery.[178] Cost recovery and the Company's expenses are not at issue. Nonetheless, as the above discussion demonstrates, in determining that the bill credit should be increased, the ALJ evaluates all the evidence, considers the Agreement as a whole, and does not consider inflation in isolation.[179]

73. For similar reasons, the ALJ rejects the Company's matching principle argument. Under that principle, revenues and costs associated with a particular test year should generally be consistent to ensure that the utility charges ratepayers the cost of the service they actually receive; this includes offsetting related costs and revenues.[180] Because this is not a ratemaking Proceeding, there is no test year to consider, nor are there any costs and revenues to offset. As such, the matching principle has no relevance here.

74. Likewise, a QSP does not create a PIM. Rather, the QSP establishes minimum performance standards for the Company to meet its obligations under § 40-3-101(2), C.R.S., to provide and maintain such service as shall promote the safety, health, comfort, and convenience of its customers and the public, and which is adequate, just, and reasonable, consistent with the

[177] *See e.g.,* Decision No. C12-0103 at ¶ 18 (mailed January 31, 2012) in Proceeding No. 12A-066E.

[178] *See e.g., id.* For example, where rates are increased to recover an increasing cost category while not considering decreases in other cost categories, this may result in over-recovery (or earning more than authorized).

[179] The Company's argument is more akin to asserting that it is improper to give significant weight to specific evidence, that is, the impact of inflation on bill credits. The ALJ applies her discretion to give this evidence the appropriate weight. *Durango Transportation, Inc.*, 122 P.3d at 252, quoting *RAM Broadcasting*, 702 P.2d at 750; *City of Boulder Fire Dep't v. Indus. Claim Appeals Office of Colo.,* 431 P.3d 674, 680 (Colo. App. 2018).

[180] *See Pub. Serv. Co. of Colorado v. Pub. Utilis. Comm'n*, 26 P.3d 1198, 1207 (Colo. 2001).

Commission's authority to establish such standards per § 40-4-108, C.R.S. This is not the same thing as a PIM. Indeed, unlike PIMs, which often have both positive and negative incentives, QSPs historically have only negative incentives for failing to meet minimum performance thresholds because they are traditionally designed to protect customers from service degradation.[181] This makes sense given that a QSP is a method by which the Commission establishes standards for a utility to meet its statutory obligations to provide adequate service to customers.[182] Positive incentives in a QSP would essentially reward a utility for doing what the law already requires of it. For the reasons discussed, the ALJ rejects the Company's PIM argument, including its implication that bill credits should not be increased because the QSP only includes negative financial incentives. For the same reasons, the ALJ rejects arguments concerning the asymmetric nature of the proposed QSP.

75. Finally, to the extent that the Company argues that increasing the bill credit runs afoul of, upends, relitigates, or challenges the Commission's decisions approving a $50 bill credit amount for the Company's prior QSPs, the ALJ finds rejects this argument as lacking merit. It is well established that the Commission's decision in each new proceeding must be based upon substantial evidence in the record of the new case, and the Commission is not bound to its prior decisions.[183] As such, the Commission is not required to maintain any prior approved QSP element. What is more, the Commission's Decision extending the current QSP was one small piece of the significant 2021 Settlement Agreement resolving voluminous issues in the Company's 2021 Rate

[181] *See e.g.,* Decision Nos. C96-1235, C00-393, C01-1330, R05-0313, C06-1303, C06-1487, C09-1159, R13-0734, R15-1247, R16-0058, and C19-0728, ¶ 17.

[182] *See* §§ 40-3-101(2) and 40-4-108, C.R.S.

[183] *See Colo. Ute Elec. Ass'n v. Pub. Utilis. Comm'n*, 602 P.2d 861, 864-865 (Colo. 1979). *See also Colo. Office of Consumer Counsel v. Pub. Serv. Co. of Colo.,* 877 P.2d 867, 876 (Colo. 1994). *See e.g.*, Decision No. R21-0790 at 16-17 (mailed December 13, 2021) in Proceeding No. 21A-0166E (in the context of an application proceeding, finding that the Commission is not bound to its prior decisions).

Case.[184] Neither the 2021 Settlement Agreement nor the Commission's Decision approving it mention or discuss the QSP's bill credits (or maximum annual bill credit caps).[185] Indeed, the Commission dedicated just two sentences to its discussion of the 2021 Settlement Agreement's QSP terms, and the Commission's findings and conclusions about the 2021 Settlement Agreement include no discussion or reference to the Agreement's QSP terms.[186] Given all of this, when the Commission approved the 2021 Settlement Agreement, it did not consider or address issues surrounding a need to increase bill credit and cap amounts.[187] This demonstrates that when it approved the current QSP, the Commission had a much different record before it than the one here.

76. For the reasons discussed, the ALJ rejects the Agreement's $55 individual bill credit, imposes a $70 bill credit, does not modify annual bill credit caps, and approves the remaining Agreement terms discussed above.

3. Equity Provisions

77. The Agreement provides that customers who are entitled to an individual bill credit under the CBG-SAIDI, CEMI, and CELI performance metrics who reside in a CBG that is a part of a DI community will receive an enhanced individual bill credit of $75 instead of the $55 individual bill credit allocated for failing these metrics.[188]

78. The Agreement requires the Company to evaluate whether CBGs in DI communities encounter more reliability issues than non-DI community CBGs based on the CBG data that it gathers and reports on, and to provide the results of this evaluation in its next QSP

[184] Hearing Exhibit 108 at 15.
[185] *Id.* at 15, 17, and 55-56.
[186] *Id.* at 15 and 17.
[187] *See id.* at 17 and 55-56.
[188] Hearing Exhibit 105, Attachment JJP-4 at 5.

filing.[189] The Agreement states that this evaluation will dictate the prioritization of needed projects to address any disparities and provide uniform electric service quality.[190]

79. The Company submits that these Agreement provisions appropriately balance the need to offer enhanced support for DI communities with the desire to maintain or strengthen the existing bill credits for non-DI customers.[191] Similarly, the Company submits that these provisions appropriately recognize that customers in DI communities may be particularly vulnerable to impacts of long outages, which merits the enhanced compensation through bill credits.[192] The Company asserts that the service evaluation provisions will be critical to inform how to prioritize projects to address possible service disparities to provide uniform electric service quality and will encourage reliability investments and related efforts across DI communities.[193] For all these reasons, the Company submits that these Agreement terms are reasonable and in the public interest.

80. Given the UCA's arguments about bill credits, in an abundance of caution, the ALJ treats the bill credit provisions above as opposed.

a. Findings, Analysis, and Conclusions

81. For the reasons discussed, the ALJ rejects the $75 enhanced bill credit for customers in DI communities and increases this amount to $90. The ALJ finds this increase is necessary to properly effectuate the General Assembly's expressed intent in § 40-2-108(3), C.R.S., to provide equity, minimize impacts, prioritize benefits to DI communities and address historical inequities, as possible. In reaching the Settlement Agreement, the Settling Parties identified a $20 delta between individual bill credit amounts for customers who do not reside in DI communities

[189] *Id.*
[190] *Id.*
[191] Hearing Exhibit 105, 23: 1-3.
[192] *Id.* at 23: 14-16.
[193] *Id.* at 23: 6-14.

and those in DI communities (*i.e.,* $55 for non-DI and $75 for DI).[194] This delta appropriately prioritizes benefits to customers in DI communities, consistent with § 40-2-108(3), C.R.S. In addition, the ALJ finds that the proposed $75 bill credit does little to address historical inequities, particularly as it pertains to the impact of poor utility service on customers in DI communities. The approved higher amount of $90 will have a more effective positive impact on customers in DI communities who experience service quality that does not meet the QSP's performance standards. With this modification, the ALJ finds that the above Agreement terms provide equity; prioritize benefits for customers in DI communities; give heightened consideration for existing or historically inadequate service quality impacts on customers in DI communities; and, to the extent possible, address historical inequities experienced by such communities in the context of service quality.[195] As such, the ALJ approves the above Agreement terms as modified above.

4. CEMI Performance Metric, Bill Credit, and Penalty Cap

82. CEMI (Customers Experiencing Multiple Interruptions) measures the volume of service interruptions lasting five minutes or longer that individual customers experience in a given timeframe.[196] CEMI is updated terminology that the Institute of Electrical and Electronics Engineers (IEEE) uses for Electric Continuity Threshold (ECT).[197] The CEMI metric replaces the ECT metric from the Company's most recent QSP.[198]

83. Under the Agreement, if a customer experiences six or more IEEE Operating Company Normalized interruptions or a performance threshold of CEMI-6, as defined in Hearing

[194] Hearing Exhibit 105, Attachment JJP-4 at 2-5.
[195] *See* §§ 40-3-101(2); 40-2-108(3)(b); 40-4-108, C.R.S.
[196] Hearing Exhibit 105, 13: 17-19; 4/2/24 Tr., 99: 15-19.
[197] *See* 4/2/24 Tr., 98: 12-22; Hearing Exhibit 101, Attachment JJP-1. The IEEE publishes standards that utilities such as Public Service rely upon. The IEEE's 1366 standard (IEEE 1366) has used the CEMI terminology since it was initially published in 1999. 4/2/24 Tr., 100: 12-21. *See also* Hearing Exhibit 801, 12-15.
[198] *See* Hearing Exhibit 105, 18: 22-23.

Exhibit 101, Attachment JJP-1,[199] during a given performance year, the Company will award the customer a $55 individual bill credit, subject to an annual penalty cap of $1.1 million.[200]

84. This metric excludes major event day interruptions calculated at a systemwide level, public damage interruptions, and outages initiated pursuant to wildfire mitigation activities.[201] Thus, under this Agreement term, a customer experiences CEMI-6 when the customer has had six or more outages lasting five minutes or longer in the performance year, excluding outages caused by the items just described.[202]

85. Additional credits apply to customers experiencing six or more interruptions in consecutive years. Specifically, after the second year in which a customer experiences six or more interruptions, the customer will receive an additional $25 (on top of the above $55 credit), totaling $80 for customers in non-DI communities and $100 for customers in DI communities.[203] After the third year and each year thereafter in which a customer experiences six or more interruptions, the customer will receive an additional $50 (on top of the above $55 credit), totaling $105 for customers in non-DI communities and $125 for customers in DI communities.[204]

86. The Company submits that these Agreement terms are reasonable and in the public interest because they incent the Company to maintain reliable electric service and prioritize

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[199] During the hearing, the Company explained that the definition of IEEE Operating Company Normalized interruptions in Hearing Exhibit 101, Attachment JJP-1 is incorporated, not CEMI-6 (which is not included in Hearing Exhibit 101, Attachment JJP-1). 4/2/24 Tr., 60: 24-25—61: 1-3. However, that document does not include a complete definition of IEEE Operating Company Normalized interruptions. *Id.* at 96: 15-25—97: 1-8; Hearing Exhibit 101, Attachment JJP-1. During the hearing, the Company explained that IEEE Operating Company Normalized interruptions essentially excludes major event days and is based on the IEEE 1366 standard's (IEEE 1366) calculation for major event day thresholds. *See* 4/2/24 Tr., 97: 5-23.

[200] Hearing Exhibit 105, Attachment JJP-4 at 3-4.

[201] *Id.* at 4. For the most part, these exclusions are consistent with the Company's explanation that IEEE Operating Company Normalized interruptions exclude major event days (based on the IEEE 1366's calculation for major event day thresholds). *See* 4/2/24 Tr., 97: 5-23.

[202] *See* Hearing Exhibit 105, Attachment JJP-4 at 3-4; Hearing Exhibit 105, 13: 17-19; 4/2/24 Tr., 99: 15-19; Hearing Exhibit 105, 13: 17-19; 4/2/24 Tr., 99: 15-19.

[203] Hearing Exhibit 105, Attachment JJP-4 at 4.

[204] *Id.*

reliability investments for customers experiencing six or more outages in consecutive years; compensate impacted customers through credits that reflect an inflation adjustment; and provide enhanced bill credits for those experiencing six or more outages in consecutive years with additional amounts for those in DI communities, thereby recognizing that such customers are likely more vulnerable to the impacts of such outages.[205] The Company also asserts that these Agreement terms recognize that it should not be financially penalized for wildfire mitigation activities and outages caused by circumstances outside of its control.[206]

a. Arguments

87. The UCA objects to the CEMI-6 metric, and recommends that this be modified to the more stringent CEMI-5, which would establish the threshold at five or more interruptions rather than six or more.[207] In support, the UCA submits that the current QSP includes the more stringent CEMI metric for reporting purposes only, and that the UCA merely seeks to establish the stricter metric as the new standard.[208] The UCA submits that the more stringent standard is a better indicator of the quality of service that the Company provides its customers and that improving service quality through fewer interruptions should be encouraged by adopting the more stringent standard.[209] It also argues that such a standard may better highlight areas of the Company's system needing the most attention.[210]

[205] Hearing Exhibit 105, 19: 1-19; 20: 14-23.
[206] *Id.* at 19: 20-22—20: 1-2.
[207] The UCA's Proposed Decision at 25-26; Hearing Exhibit 801, 15: 15-17.
[208] *See* the UCA's Proposed Decision at 25, citing Hearing Exhibit 800, 10: 11-17—11: 1.
[209] *See* Hearing Exhibit 800, 11: 7-11.
[210] *See id.*

88. For the same or similar reasons discussed above, the UCA objects to the Agreement's $55 bill credit amount and $1.1 million annual maximum penalty cap for this metric.[211] The UCA does not object to the Agreement's remaining CEMI provisions.[212]

89. The Company responds to arguments to increase the bill credit and maximum penalty amounts with the same or similar arguments discussed above.[213] The Company asserts that the UCA failed to meet its burden to show by a preponderance of the evidence that the CEMI-5 standard should apply.[214] Specifically, the Company argues that the since the UCA did not attempt to quantify the costs and benefits associated with the actions the Company must take to avoid incurring increased penalties under a CEMI-5 standard, the UCA's proposal lacks substantial evidentiary support, is unduly punitive, and may result in unintended consequences.[215] The Company submits that recommendations and proposals that may require it to materially alter its distribution and asset management strategies are better addressed in a proceeding where the costs and benefits of such proposals can be thoroughly evaluated and vetted.[216] The Company expects that its next Distribution System Plan (DSP) "will provide an opportunity for more fulsome dialogue and direction on how the Company should best position [its] distribution system to meet the quickly evolving needs of [the Company's] customers and communities in a cost-effective manner."[217]

[211] The UCA's Proposed Decision at 19-24
[212] 4/2/24 Tr., 216: 16-19.
[213] Joint Proposed Decision at 36-41.
[214] *Id.* at 33.
[215] *Id.*
[216] *Id.* at 34.
[217] Hearing Exhibit 103, 32: 16-19—33: 1-8. *See* Joint Proposed Decision at 34.

b. Findings, Analysis, and Conclusions

90. For the same reasons discussed above, the ALJ rejects the $55 bill credit for this metric, imposes a $70 bill credit instead, and declines to increase the maximum annual penalty cap for this metric. The Agreement's enhanced bill credit amounts for this metric will be added to the approved $70 bill credit for customers not residing in DI communities, and to the approved $90 bill credit for customers in DI communities.

91. The ALJ finds that the preponderance of the evidence does not support modifying the Agreement's CEMI-6 metric to CEMI-5. For example, the evidence does not suggest that the Agreement's CEMI-6 metric fails to conform with industry standards or is otherwise necessary to ensure optimal reliability. Instead, it appears that the CEMI-5 metric is proposed to require continuous improvement, which is not a Commission QSP policy.[218] Likewise, the evidence fails to indicate whether the Company can consistently meet a more stringent standard without additional investment in its system. This is not a speculative concern. The evidence establishes that in performance year 2022, if a directly comparable measure to CEMI-5 (ECT >4), was in place for the current QSP, 39,613 customers would have qualified for a bill credit, as compared to the 10,758 customers who qualified under the Agreement's standard.[219] This raises questions as to the Company's ability to consistently meet the more stringent standard without additional investment. Evidence on whether such a standard can consistently be met without additional investment would inform whether a more stringent standard serves the public interest. Indeed, such information would enable a more accurate evaluation of the costs and benefits of such a standard. For example, if the Company cannot consistently meet the more stringent standard without

[218] Decision No. C19-0728, ¶ 17.

[219] Hearing Exhibit 302, 14: 5-11; Hearing Exhibit 300, Attachment MWR-4C at 80; Hearing Exhibit 300 at 83: 1-2. *See* Hearing Exhibit 300, 70: 12-17 (prior QSPs referred to the comparable measure as "ECT." ECT>5 means more than five interruptions, which is equal to CEMI-6).

investing millions into its system, the benefits of the more stringent standard may be outweighed by its costs. The ALJ agrees that the Company's next DSP will provide an opportunity for a more fulsome dialogue on how the Company should best position its distribution system to cost-effectively meet the quickly evolving needs of its customers.[220] In short, it may be appropriate to consider a more stringent standard in the future, but this record lacks sufficient evidence to determine that a more stringent standard is in the public interest.

92. For the reasons discussed, the ALJ rejects the UCA's recommendation to modify the CEMI-6 metric and approves the above Agreement terms with the modifications discussed. In addition, to ensure clarity and better enable the public to understand the Company's tariff, unless the relevant tariff sheets already include a definition of IEEE Operating Company Normalized Interruptions, the Company must include the definition in its compliance tariff filing.

5. CELI Performance Metric, Bill Credit, and Penalty Cap

93. This metric, referred to as CELI (Customers Experiencing Long Interruption Durations), measures the duration of service interruptions encountered by individual electric customers.[221] Under the Agreement, if a customer experiences an Operating Company Normalized interruption of 18 or more hours in a given performance year, the Company will award the customer a $55 individual bill credit for each occurrence, subject to an annual penalty cap of $1.1 million.[222] During the hearing, the Company clarified that this metric includes interruptions of "precisely 18 hours," meaning, that the Agreement does not require that the interruption last longer

[220] Hearing Exhibit 103, 32: 16-19—33: 1-8.

[221] Hearing Exhibit 105, 13: 20-22. During the hearing, the Company explained that CELI is the updated standard industry terminology for ERT (prior used terminology). 4/2/224 Tr., 101: 18-25—102: 1-6.

[222] Hearing Exhibit 105, Attachment JJP-4 at 4. As with the CEMI metric, this metric incorporates the definition of an Operating Company Normalized interruption as defined in Hearing Exhibit 101, Attachment JJP-1, to the Company's Direct Testimony. *Id.* The same explanation of this term discussed earlier also applies here. 4/2/24 Tr., 102: 17-25.

than 18 hours.[223] The Company also agreed that the proposed tariff incorrectly describes this metric as requiring interruptions to be "greater than" 18 hours, and that the Company will correct this in a compliance tariff filing so that it is clear that the interruption duration need not be greater than 18 hours.[224] This metric, CELI-18, is more stringent than the current QSP's equivalent metric, which sets the standard at interruptions of 24 or more hours. This metric excludes major event day interruptions, public damage interruptions, transmission level bulk supply interruptions, and outages initiated pursuant to wildfire mitigation activities.[225]

94. During the hearing, the Company explained that for purposes of measuring whether an 18-hour outage has occurred, if the power flickered on for three seconds or even three minutes during a prolonged outage, the Company would still characterize the outage, in aggregate, as long duration.[226] But if the power is restored for five minutes at any point during the outage, and then the outage resumed, the clock would be reset.[227] For example, where a customer experiences an 8 hour outage, then the power is restored for 5 minutes, the clock would be reset to zero at that 5 minute point, so that the 8-hour outage does not count toward determining whether the customer experienced an 18-hour outage under this metric.[228]

95. The Company submits that these Agreement terms are reasonable and in the public interest because they incent the Company to maintain reliable electric service and compensate customers impacted by outages lasting 18 hours or more through credits that reflect an inflation adjustment.[229] The Company also asserts that these Agreement terms recognize that it should not

[223] *See* 4/2/24 Tr., 103: 1-11.
[224] 4/3/24 Tr., 19: 9-25—20: 1; 23: 25—25: 1-13. *See* Hearing Exhibit 110 at 8.
[225] Hearing Exhibit 105, Attachment JJP-4 at 4-5.
[226] *See* 4/2/24 Tr., 103: 12-25—104: 1-11.
[227] *See id.* at 104: 1-18.
[228] *See id.*
[229] Hearing Exhibit 105, 20: 14-23.

be financially penalized for wildfire mitigation activities, outages caused by circumstances outside of its control, and bulk supply conditions emanating from neighboring transmission providers (other than Public Service).[230] In addition, the Company submits that by establishing an 18-hour CELI threshold, this metric is more stringent than the 24-hour threshold in its most recent QSP, which further encourages improvement without being unduly punitive.[231]

a. Arguments

96. For the same reasons discussed above, the UCA objects to the $55 bill credit amount and $1.1 million penalty cap.[232] With the clarification that CELI-18 includes outages lasting precisely 18 hours, rather than over 18 hours, the UCA does not object to the Agreement's remaining CELI provisions.[233]

97. The Company responds to bill credit and penalty cap arguments with the same arguments discussed above.[234]

b. Findings, Analysis, and Conclusions

98. For the same reasons discussed above, the ALJ rejects the $55 bill credit for this metric, imposes a $70 bill credit instead, declines to increase the maximum annual penalty cap, and approves the remaining CELI terms. The Company's compliance tariff must clearly indicate that bill credits are triggered under this metric if an interruption lasts at least 18 hours.

6. Customer Complaint Performance Metric, Bill Credit, and Penalty Cap

99. The Agreement provides that if the number of customer complaints exceeds 6.5 per 1000 customers, measured by the number of premises as of December 31 and on a performance

[230] *Id.* at 21: 13-18.
[231] *See id.* at 21: 1-6.
[232] The UCA's Proposed Decision at 19-24.
[233] 4/2/24 Tr., 221: 3-25—222: 1-10. *See* Hearing Exhibit 801, 5: 6-9
[234] Joint Proposed Decision at 36-41.

year basis, the Company will incur a $1.1 million penalty.[235] The penalty will be credited on a prorated basis among the Company's active premises.[236]

100. The Company explains that this Agreement term evaluates the amount of formal and informal complaints against it that were submitted to the Commission, in proportion to the number of active customer premises at the end of each performance year.[237] The Company submits that this metric is reasonable and in the public interest because no Intervener submitted answer testimony recommending adjustments to this metric since it was most recently updated in 2022, and the penalty cap is updated to reflect inflation since the metric was last modified.[238]

a. Arguments

101. For the same reasons discussed above, the UCA objects to the Agreement's $1.1 million annual penalty cap and recommends that the cap be increased to $1.6 million.[239] The UCA does not object to the Agreement's other Customer Complaint provisions.[240]

102. The Company responds with the same or similar arguments discussed above.[241]

b. Findings, Analysis, and Conclusions

103. For the same reasons discussed above, the ALJ declines to increase the maximum annual penalty cap for this metric. In addition, unlike the CELI and CEMI metrics, over the last ten years (from 2013-2022), the Company did not fail this QSP metric at all, and therefore did not pay any bill credits for the predecessor metric.[242] This performance further demonstrates that

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[235] Hearing Exhibit 105, Attachment JJP-4 at 3.
[236] *Id.*
[237] Hearing Exhibit 105, 13: 10-13.
[238] *Id.* at 17: 3-9, citing Decision No. C22-0178 (mailed March 24, 2022) in Proceeding No. 21AL-0317E (Hearing Exhibit 108).
[239] 4/2/24 Tr., 213: 19-25; the UCA's Proposed Decision at 19-24.
[240] 4/2/24 Tr., 213: 19-25.
[241] Joint P Proposed Decision at 36-41.
[242] Hearing Exhibit 800, 7: 1-5 (Table SEE-3); Hearing Exhibit 800, Attachment SEE-3.

increasing the maximum annual penalty cap for this metric is unnecessary to incent the Company to meet this performance threshold.

7. Telephone Response Time Performance Metric, Bill Credit, and Penalty Cap

104. The Agreement requires that it if the Company responds to less than 70 percent of the telephone calls to its call centers within 45 seconds or less, it will incur a flat $1.1 million penalty, which will be credited on a prorated basis among the Company's active premises.[243] During the hearing, the Company explained that success or failure under this metric will be measured based on its performance during the entire relevant performance year.[244] The Company prioritizes electric outage and gas emergency calls and can report on these separately.[245]

105. The Company explains that this metric is intended to measure the average amount of time it takes the Company's call center to respond to many types of customer telephone calls.[246] During the hearing, the Company explained that the response time will be measured based on the amount of time it takes for the Company's customer service representative to speak with the calling customer; this explicitly excludes any Company automated telephone responses (such as its integrated voice response).[247] The Company submits that these Agreement terms are reasonable and in the public interest because they incent the Company's call centers to continue to timely and efficiently respond to customer calls, and because the penalty cap reflects inflation since the Commission approved the Company's current QSP.[248]

[243] Hearing Exhibit 105, Attachment JJP-4 at 3.
[244] 4/2/24 Tr., 56: 1-8.
[245] Hearing Exhibit 105, Attachment JJP-4 at 3.
[246] Hearing Exhibit 105, 13: 14-16.
[247] 4/2/24 Tr., 54: 20-25—55: 1-12.
[248] *See* Hearing Exhibit 105, 18: 1-7.

a. Arguments

106. For the same reasons discussed above, the UCA objects to the Agreement's $1.1 million annual penalty cap and recommends that the cap be increased to $1.6 million.[249] The UCA does not object to the Agreement's other Telephone Response Time provisions.[250]

107. The Company responds with the same arguments discussed above.[251]

b. Findings, Analysis, and Conclusions

108. For the same reasons discussed above, the ALJ declines to increase the maximum annual penalty cap for this metric. In addition, unlike the CELI and CEMI metrics, over the last ten years (from 2013-2022), the Company did not fail this QSP metric at all, and therefore did not pay any bill credits for the predecessor metric.[252] This performance further demonstrates that increasing the maximum annual penalty cap for this metric is unnecessary to incent the Company to meet this performance standard.

IV. CONCLUSIONS

109. For the reasons and authorities discussed, the ALJ finds that the preponderance of the evidence establishes that with the changes discussed, the Settlement Agreement reflects a just and reasonable compromise between the 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. As such, the ALJ recommends that the Settlement Agreement be approved as modified above and that the Application be granted consistent with the Agreement's and this Decision's modifications.

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[249] 4/2/24 Tr., 214: 7-9; the UCA's Proposed Decision at 19-24.
[250] 4/2/24 Tr., 214: 7-16.
[251] Joint Proposed Decision at 36-41.
[252] Hearing Exhibit 800, 7: 1-5 (Table SEE-3); Hearing Exhibit 800, Attachment SEE-3.

110. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this Proceeding along with this written recommended decision and recommends that the Commission enter the following order.

V. ORDER

A. The Commission Orders That:

1. The Joint Motion to Approve Settlement Agreement filed March 13, 2024 is partially granted and the Settlement Agreement filed March 13, 2024 is approved with modifications, consistent with the above discussion.

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.

3. The Motion to Strike Portions of the Rebuttal Testimony of Company Witness Peuquet filed on March 22, 2024 by the Office of the Utility Consumer Advocate is denied.

4. No more than five business days after this Recommended Decision becomes a Commission Decision, if that is the case, Public Service Company of Colorado (Public Service) must file a compliance advice letter and tariff sheets in substantially the same form as the Tariff Sheets included in Hearing Exhibit 110, with the modifications discussed herein, on not less than two business days' notice. The compliance filings must be consistent with the Settlement Agreement and this Decision, made in a new advice letter proceeding, and comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire before the effective date. The advice letter and tariff sheets must comply in all substantive respects to this Decision to be filed as a compliance filing on shortened notice.

5. Proceeding No. 23A-0356E is closed.

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

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

8. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

9. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

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

(S E A L)

ATTEST: A TRUE COPY

Rebecca E. White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

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Administrative Law Judge