

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

PROCEEDING NO. 23A-0394E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING EXPENSES INCURRED FOR THE PERIOD JANUARY 2022 THROUGH DECEMBER 2022 THAT ARE RECOVERED THROUGH THE ELECTRIC COMMODITY ADJUSTMENT AND PURCHASED CAPACITY COSTS

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
ALENKA HAN  
GRANTING UNOPPOSED MOTION TO APPROVE  
COMPREHENSIVE SETTLEMENT AGREEMENT,  
APPROVING UNOPPOSED COMPREHENSIVE REVISED  
SETTLEMENT AGREEMENT,  
AND GRANTING APPLICATION**

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Mailed Date: June 24, 2024

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**I. STATEMENT****A. Summary**

1. This Recommended Decision grants the Unopposed Motion to Approve Comprehensive Revised Settlement Agreement filed jointly by the parties to this Proceeding on April 12, 2024.

**B. Procedural Background**

2. On August 1, 2023, Public Service Company of Colorado (Public Service or the Company) filed its Verified Application (Application) seeking approval of the following: (1) the fuel, purchased energy, purchased wheeling, and other expenses incurred from January 1, 2022 through December 31, 2022 that have been reflected in the Company's Electric Commodity Adjustment (ECA); (2) the purchased capacity expenses incurred by the Company from January 1, 2022, through December 31, 2022 and, (3) the Company's calculation of the 2022 Short-Term Sales Margins that have been used to adjust the 2023 ECA Deferred Account Balance.

3. Contemporaneously with its Application, the Company filed the direct testimony of the following individuals, accompanied by numerous exhibits:

- a) Jason J. Peuquet, Director of Regulatory Administration, Public Service<sup>1</sup>;
- b) Mark G. Schultz, Power Operations Manager, Public Service<sup>2</sup>;
- c) Kyle L. Williams, General Manager, Power Generation, Public Service<sup>3</sup>;
- d) Jeffrey R. Knighten, Pricing Consultant, Rates & Regulatory Affairs, Public Service<sup>4</sup>;

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<sup>1</sup> Hearing Exhibit 101, Direct Testimony of Jason J. Peuquet, with Attachments JJP-1, JJP-2, and JJP-3 (both highly confidential and public versions).

<sup>2</sup> Hearing Exhibit 102, Direct Testimony of Mark G. Schultz, with Attachments MGS-1 (both highly confidential and public versions), and MS-2.

<sup>3</sup> Hearing Exhibit 103, Direct Testimony of Kyle L. Williams, with Attachments KLW-1 (both highly confidential and public versions). And KLW-2.

<sup>4</sup> Hearing Exhibit 104, Direct Testimony of Jeffrey R. Knighten, with Attachments JRK-1, JRK-2 (both highly confidential and public versions), and JRK-3 through JRK-7.

- e) Michael A. Rein, Principal Engineer in the Transmission Operations Department of Public Service<sup>5</sup>; and,
- f) Greg P. Ryan, who is employed by Xcel as Manager, Public Service Utility Accounting.<sup>6</sup>

4. Along with its Verified Application and direct testimony, the Company filed a Motion for Extraordinary Protection of Highly Confidential Information. That Motion was granted by Decision No. R23-0697-I, issued October 24, 2023.

5. On August 2, 2023, the Commission's Notice of Application Filed was sent to all interested persons and entities. The Notice stated that Public Service had filed direct testimony with its Verified Application and was seeking a Commission decision within 120 days of the Application being deemed complete.<sup>7</sup> In addition, the Notice set a 30-day window within which interested persons could intervene, and a 37-day window within which Commission Staff was to file its Intervention.

6. On August 14, 2023, the Colorado Office of Utility Consumer Advocate (UCA) filed its Notice of Intervention of Right, Request for Hearing, and Entry of Appearances. UCA listed 13 issues it sought to investigate in this Proceeding.

7. On September 1, 2023, Trial Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing. Staff identified 11 points at issue in this proceeding.

8. The parties to this Proceeding are thus Public Service, Staff, and UCA.

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<sup>5</sup> Hearing Exhibit 105, Direct Testimony of Michael A. Rein, with Attachment MAR-1.

<sup>6</sup> Hearing Exhibit 106, Direct Testimony of Greg P. Ryan, with Attachments GPR-1 through GPR-3, GPR-5, and both highly confidential and public versions of GPR-4, GPR-6, and GPR-7.

<sup>7</sup> Notice of Application Filed, filed Aug. 2, 2023.

9. On September 13, 2023, the Commission deemed the Application complete and referred it by minute entry to an Administrative Law Judge (ALJ) for disposition. Subsequently, this Proceeding was assigned to the undersigned ALJ.

10. On October 4, 2023, Public Service filed an Unopposed Motion to Approve Procedural Schedule. In the motion, Public Service represented that the parties had agreed to a proposed procedural schedule and dates for an evidentiary hearing. However, the evidentiary hearing dates proposed by the parties would have imposed undue pressure on the Commission to issue a final decision before the 120-day statutory time period set by § 40-6-109.5, C.R.S. The parties therefore proposed an extension of the statutory deadline by an additional 260 days pursuant to § 40-6-109.5(1) and (4), for a total time period of 380 days from the date Public Service's Application was deemed complete for the Commission to issue a final decision in this Proceeding.

11. On October 12, 2023, the undersigned ALJ issued Decision No. R23-0688-I, acknowledging the interventions by right filed by UCA and Staff. Decision No. R23-0688-I also scheduled a prehearing conference for Friday, October 13, 2023, to discuss the need to further extend the statutory deadline.

12. On October 13, 2023, the ALJ held the prehearing conference as scheduled. All parties appeared. By Decision No. R23-0697-I, issued October 24, 2023, the ALJ found that the parties had presented sufficient evidence to justify extending the deadline under § 40-6-109.5(4), C.R.S., by an additional 130 days, for a total of 380 days from the date the Application was deemed complete until the issuance of a final Commission decision. Decision No. R23-0697-I thus extended the statutory time period by an additional 130 days, or up to and including September 27, 2024.

13. Decision No. R23-0697-I also adopted the parties' proposed procedural schedule and set an evidentiary hearing for February 28 and 29, 2024.

14. On February 6, 2024, Public Service, along with Staff, filed a Motion to Approve Non-Unanimous Comprehensive Settlement Agreement and Recommended Hearing Procedures (Motion to Approve), attaching their Non-Unanimous Comprehensive Settlement Agreement (Non-Unanimous Settlement Agreement)<sup>8</sup>. Public Service represented that UCA had not joined in the settlement and proposed that the ALJ conduct a hearing on the efficacy of the settlement on February 29, 2024, the second day of the scheduled evidentiary hearing.

15. UCA requested permission to conduct discovery about settlement issues and suggested the parties exchange settlement testimony prior to any hearing on the Motion to Approve. Because Public Service and Staff expressed concern that the procedural schedule UCA proposed in advance of the settlement hearing did not allow sufficient time to conduct and exchange settlement discovery, the ALJ informally proposed postponing the settlement hearing until April 2024. Thereafter, with the parties' agreement, the ALJ issued Decision No. 24-0107-I on February 20, 2024, vacating the February 28-29, 2024 evidentiary hearing; establishing a new procedural schedule to govern settlement discovery; and scheduling an evidentiary hearing on the Motion to Approve for April 18, 2024. Under the newly-adopted procedural schedule, Public Service and Staff were to file testimony in support of the settlement by March 1, 2024; any testimony in opposition to the settlement was due by March 27, 2024.

16. On March 1, the following testimony was filed in support of the Non-Unanimous Settlement Agreement:

a) Public Service filed the Settlement Testimony of Jason J. Peuquet<sup>9</sup>; and,

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<sup>8</sup> Hearing Exhibit 114.

<sup>9</sup> Hearing Exhibit 113.

- b) Staff filed the Settlement Testimony of Erin O'Neill, Chief Economist and Deputy Director of Fixed Utilities for the Commission.

17. Subsequently, on March 27, 2024, UCA filed the following testimony in opposition to the settlement:

- a) Confidential and public versions of Chris Neil's Testimony in Opposition to the Settlement, along with Attachments CN-12 through CN-14<sup>10</sup>; and,
- b) Leslie Henry-Sermos' Testimony in Opposition to the Settlement, along with Attachments LHS-4 through LHS-6.<sup>11</sup>

18. On April 11, 2024, a week before the rescheduled settlement hearing, counsel for Public Service, Matthew Larson, contacted the undersigned ALJ informally by email to advise her that the Company, Staff, and UCA had continued their settlement discussions and had reached a comprehensive settlement agreement to which all three parties agreed. In particular, Mr. Larson indicated that UCA dropped its opposition to the settlement agreement after the parties amended two sections of the agreement. Further, Mr. Larson conveyed the parties' view that in light of the parties' reaching a comprehensive settlement agreement, it was no longer necessary to hold an evidentiary hearing on April 18, 2024.

19. Subsequently, on April 12, 2024, Public Service and Staff jointly filed an Unopposed Motion to Approve Comprehensive Revised Settlement Agreement, Motion to Vacate Evidentiary Hearing and Recommended Procedures, and Request for Waiver of Response Time (Unopposed Motion to Approve). The Unopposed Revised Comprehensive Settlement Agreement (Unopposed Settlement Agreement) was attached to the Unopposed Motion to Approve as Attachment A. The Company and Staff have executed the Unopposed Settlement Agreement and together will be referred to as the Settling Parties. UCA is not a signatory to the Unopposed Settlement Agreement. However, in the Unopposed Motion to Approve, the Settling Parties

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<sup>10</sup> Hearing Exhibit 303.

<sup>11</sup> Hearing Exhibit 304

represent that UCA “takes no position on the [Unopposed] Revised Settlement Agreement” and “does not oppose” it.<sup>12</sup> By Decision No. R24-0238-I, issued April 16, 2024, the ALJ vacated the April 18, 2024 evidentiary hearing on the settlement, and vacated the remainder of the procedural schedule.

20. The undersigned ALJ now considers the parties’ proposed Unopposed Revised Comprehensive Settlement Agreement.

## **II. TERMS OF THE UNOPPOSED REVISED COMPREHENSIVE SETTLEMENT AGREEMENT**

### **A. Company-Owned Community Solar Garden (CSG) Operations in 2022**

21. The Settling Parties agreed that Public Service will make a one-time credit to customers of \$112,000 through the ECA associated with Company-owned CSG operations in 2022.<sup>13</sup> The credit is being applied because, as Public Service acknowledged, “these facilities [experienced] lower-than-expected performance . . . in 2022.”<sup>14</sup>

22. The Company will apply the credit “in the first quarterly ECA after” this Decision becomes final.<sup>15</sup>

23. This provision was unchanged from the Non-Unanimous Settlement Agreement filed by Public Service in April 2024.<sup>16</sup>

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<sup>12</sup> Unopposed Motion to Approve Comprehensive Revised Settlement Agreement, Motion to Vacate Evidentiary Hearing and Recommended Procedures, and Request for Waiver of Response Time, pp. 1-2, filed April 12, 2024.

<sup>13</sup> See Unopposed Revised Comprehensive Settlement Agreement (Unopposed Settlement Agreement), § I, ¶ 1, p. 2.

<sup>14</sup> Hearing Exhibit 113, Settlement Testimony of Jason J. Peuquet, p. 9, lines 3-10.

<sup>15</sup> Unopposed Settlement Agreement, § I, ¶ 1, p. 2.

<sup>16</sup> Hearing Exhibit 114.

24. Mr. Peuquet, the Company's Director of Regulatory Administration, characterized the resolution of issues surrounding the under-performing CSGs in 2022 as "a fair and appropriate resolution of the concerns raised by Staff and UCA."<sup>17</sup>

**B. Cherokee 4 Operations in 2022**

25. The Settling Parties agreed that the operation of Cherokee 4 in 2022 "was prudent and no associated disallowance" was necessary or in the public interest.<sup>18</sup>

26. However, all three parties agreed to discuss "the long-term modeling of existing unit operations" as required by "Decision No. C24-0052 in Proceeding No. 21A-0141E."<sup>19</sup> As Mr. Peuquet explained, this provision ensures that "captur[ing] the operations of existing units like Cherokee 4 will be part of" future modeling conferrals, thereby embedding into the Unopposed Settlement Agreement an incentive for the Company to "strive to enhance the way that existing generators are modeled in the ERP [Electric Resource Plan] process."<sup>20</sup>

27. In addition, Public Service, Staff and UCA "commit to have a discussion on the retirement of Cherokee 4 scheduled for the end of 2027 and the anticipated potential impacts of that retirement on system operations."<sup>21</sup> The discussions will commence before December 31, 2024, and will occur "in an ECA quarterly stakeholder meeting or another appropriate forum."<sup>22</sup>

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<sup>17</sup> Hearing Exhibit 113, p. 9, lines 8-10.

<sup>18</sup> Unopposed Settlement Agreement, § II, ¶ 2, p. 2.

<sup>19</sup> *Id.* at § II, ¶ 3, p. 3; *see also, e.g.*, Decision No. C24-0052, issued Jan. 23, 2024, in Proceeding No. 21A-0141E (Public Service's Application for Approval of its 2021 Electric Resource Plan and Clean Energy Plan), ¶ 286, p. 112.

<sup>20</sup> Hearing Exhibit 113, p. 11, line 6 – p. 12, line 3.

<sup>21</sup> Unopposed Settlement Agreement, § II, ¶ 4, p. 3.

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

28. As with the provisions pertaining to CSGs, this provision of the Unopposed Settlement Agreement is generally unchanged from the provisions included in the Non-Unanimous Settlement Agreement.<sup>23</sup>

**C. Comanche 3<sup>24</sup> Replacement Power Modeling**

29. The Settling Parties agreed that Public Service will credit its customers \$1.4 million through the ECA “to resolve issues regarding the modeling adjustments performed to reach the replacement power value for the Comanche 3 outage in 2022.”<sup>25</sup> Like the credit for CSGs, this credit will be applied in the “first quarterly ECA” after this Decision becomes a final Decision of the Commission.<sup>26</sup> The \$1.4 million credit represents an increase of \$400,000 from the amount of credit to which the Settling Parties had originally agreed.<sup>27</sup> UCA had argued that the Settling Parties had undervalued Comanche 3, and that if it was valued as low as Public Service had estimated “it should be shut down.”<sup>28</sup> UCA had also pointed out that the Settling Parties disagreed about the methodology for calculating the Comanche 3 replacement cost.<sup>29</sup> The compromise now incorporated into the Unopposed Settlement increases by 40 percent the amount of credit the Company’s customers receive and addresses UCA’s expressed concerns about Comanche 3’s costs.

30. In addition, all three parties have agreed to engage in “discussions on replacement power cost modeling approaches and tools” after this Decision becomes a final Decision of the

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<sup>23</sup> Hearing Exhibit 114, § II, ¶¶ 2-4, pp. 2-3.

<sup>24</sup> The parties refer to this facility as “Comanche 3” in their pleadings and in the settlement documents. However, recently, the facility has been more commonly referred to as Pueblo 3. To avoid confusion with the parties’ Unopposed Revised Comprehensive Settlement Agreement, the facility will be referred to in this Decision as Comanche 3.

<sup>25</sup> Unopposed Settlement Agreement, § III, ¶ 5, p. 3.

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

<sup>27</sup> *See* Hearing Exhibit 114, § III, ¶ 5, p. 3.

<sup>28</sup> Hearing Exhibit 303, Chris Neil’s Testimony in Opposition to Settlement, p. 38, line 15 – p 39, lin3 6

<sup>29</sup> *Id.* at p. 39, line 19 – p. 40, line 2.

Commission.<sup>30</sup> Under the terms of the Unopposed Settlement Agreement, Public Service will file a status report updating the Commission on these discussions by the end of 2024<sup>31</sup> and the parties will discuss and determine whether additional status reports are needed.<sup>32</sup>

#### **D. Additional Reporting**

31. The Settling Parties agreed to a number of additional reporting requirements to be imposed on Public Service.<sup>33</sup> These additional measures require Public Service to do the following:

- a) Provide reports on monthly curtailment costs for renewable resources on purchase power agreements, as part of future ECA and Purchased Capacity Cost Adjustment (PCCA) Annual Prudence Review direct case filings.<sup>34</sup>
- b) Retain unreconciled curtailment data until the applicable prudence review proceeding is completed. The parties agree to continue discussions regarding the specific information and scope of data to be retained.<sup>35</sup>
- c) Provide additional reporting in quarterly ECA filings, in accordance with the information detailed by Erin O’Neill, the Commission’s Chief Economist, in her Answer Testimony regarding Exhibits 10A and 10B.<sup>36</sup>
- d) Provide a detailed Generation Table for the Company’s Rush Creek project, including a comparison of “actual versus forecast generation and details regarding the drivers of any shortfall or over-production,” like the Company already provides with respect to the Cheyenne Ridge project.<sup>37</sup> And,
- e) Provide “strategies for enhancing data regarding curtailment drivers and investment strategies to manage curtailments in the Company’s Pueblo Just Transition Plan filing.”<sup>38</sup>

32. These provisions, too, remained unchanged from the Non-Unanimous Settlement Agreement.<sup>39</sup>

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<sup>30</sup> Unopposed Settlement Agreement, § III, ¶ 6, p. 3.

<sup>31</sup> *Id.* at § III, ¶ 6(a), p. 3.

<sup>32</sup> *Id.* at § III, ¶ 6(b), p. 3.

<sup>33</sup> *Id.* at § IV, ¶ 7, pp. 4-5.

<sup>34</sup> *Id.* at § IV, ¶ 7(a), p. 4.

<sup>35</sup> *Id.* at § IV, ¶ 7(b), p. 4.

<sup>36</sup> *Id.* at § IV, ¶ 7(c), p. 4.

<sup>37</sup> *Id.* at § IV, ¶ 7(d), pp. 4-5.

<sup>38</sup> *Id.* at § IV, ¶ 7(e), p. 4.

<sup>39</sup> Hearing Exhibit 114, § IV, ¶ 7, pp. 4-5.

### III. FINDINGS AND CONCLUSIONS

33. The Settling Parties have the burden of proving by a preponderance of the evidence that the Unopposed Settlement Agreement is just and reasonable. In reviewing the terms of the Unopposed Settlement Agreement, the undersigned ALJ applied the Commission's direction and policy with respect to reviews of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

34. The Commission has an independent duty to determine matters that are within the public interest. *See, Caldwell v. Pub. Utils. Comm'n*, 692 P.2d 1085, 1089 (Colo. 1984).

35. The undersigned ALJ has reviewed the full administrative and evidentiary record, including: the direct, answer, rebuttal, and settlement testimony filed by the Parties; the attachments submitted with testimony; the Motion to Approve and the Unopposed Motion to Approve; and the terms and conditions of both the Non-Unanimous Settlement Agreement and the Unopposed Settlement Agreement. Further, the ALJ has duly considered the positions of the Parties in this matter and weighed the evidence presented.

36. Based on a review of the entire record, the undersigned finds that approval of the Application filed in this Proceeding is consistent with the Unopposed Settlement Agreement and is in the public interest. The Unopposed Settlement Agreement proposes a fair and timely resolution of all contested issues and substantial evidence shows that its terms will benefit the Settling Parties, UCA, and Public Service's customers.

37. The ALJ further finds that the Settling Parties have established by a preponderance of the evidence that the Unopposed Settlement Agreement is just, reasonable, in the public interest, and should be accepted by the Commission.

**IV. ORDER****A. It Is Ordered That:**

1. The Unopposed Motion to Approve Comprehensive Revised Settlement Agreement filed by Public Service Company of Colorado (Public Service) and Trial Staff of the Public Utilities Commission (collectively, the Settling Parties) on April 12, 2024, is granted, consistent with the discussion above.

2. The Verified Application seeking approval of (1) the fuel, purchased energy, purchased wheeling, and other expenses incurred from January 1, 2022 through December 31, 2022 that have been reflected in the Company's Electric Commodity Adjustment (ECA); (2) the purchased capacity expenses incurred by the Company from January 1, 2022, through December 31, 2022 and, (3) the Company's calculation of the 2022 Short-Term Sales Margins that have been used to adjust the 2023 ECA Deferred Account Balance, filed by Public Service on August 1, 2023, is granted and approved as amended by the Unopposed Comprehensive Revised Settlement Agreement, consistent with the discussion above.

3. The Unopposed Comprehensive Revised Settlement Agreement filed by the Settling Parties on April 12, 2024, and attached to this Decision as Attachment A, is approved without modification, consistent with the discussion above.

4. 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.

5. 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.

- a. 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.

- b. 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.

6. 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

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,  
Director