

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0471E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO TO IMPLEMENT DELIVERY OF ONE-SECOND TIME-STAMPED ELECTRIC USAGE DATA.

RECOMMENDED DECISION GRANTING MOTION FOR APPROVAL OF SETTLEMENT AND APPROVING SETTLEMENT AGREEMENT

Issued Date: September 24, 2024

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A. It Is Ordered That:29

I. STATEMENT AND PROCEDURAL HISTORY

A. Summary

1. This Decision recommends that the Motion for Approval of Settlement Agreement filed by Applicant Public Service Company of Colorado (“Public Service” or “the Company”), be granted, and the Settlement Agreement approved without modifications.

2. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge (“ALJ”) now transmits to the Commission the record in this proceeding and recommends that the Commission enter the following order.

B. Appearances and Exhibits

3. A fully remote evidentiary hearing addressing Public Service’s contested Motion to Approve Settlement was held on Thursday, June 13, 2024, as scheduled and noticed by Decision No. R24-0290-I, issued May 1, 2024.

4. All four parties to this Proceeding appeared at the hearing with counsel. The following individuals appeared on each party’s behalf:

- a) Public Service was represented by Steven Denman, Assistant General Counsel. Also appearing on behalf of the Company were Michael Pascucci, Director of Regulatory Policy, and Joel Miller, Director of Advanced Grid Customer Solutions for Xcel Energy;

- b) Trial Staff (“Staff”) of the Public Utilities Commission (“PUC” or “Commission”) was represented by Assistant Attorneys General Justin Cox and Ross Smith;
- c) The Office of the Utility Consumer Advocate (“UCA”) was represented by Counsel Kate Crampton. Also appearing with Ms. Crampton was Dr. Scott England, economist with UCA; and,
- d) Mission:data Coalition, Inc. (“Mission:data”) was represented by Counsel Jacob Schlesinger of Keyes & Fox, LLP. Also appearing on Mission:data’s behalf was Michael Murray, President of Mission:data.

5. Before the commencement of the evidentiary portion of the hearing, Matthew Schroer, Associate Energy Efficiency Engineer for Public Service presented a demonstration of Public Service’s data software kit and its applications.

6. The following witnesses testified at the hearing:

- a) Michael Pascucci.
- b) Joel Miller.
- c) Michael Murray was sworn in to testify, stated that his answer testimony was correct and required no changes, but was not cross-examined by Public Service, Staff, or UCA.

7. During the hearing, the following exhibits were admitted:

- a) Hearing Exhibit 500, including all of the exhibits listed therein: Public Service’s Hearing Exhibits 100 through 105; Staff’s Hearing Exhibits 200 and 201; UCA’s Hearing Exhibits 300 and 301; and Mission:data’s Hearing Exhibits 400 and 401. All attachments to exhibits listed on Hearing Exhibit 500 were also admitted.
- b) Applicant’s Hearing Exhibits 106, 107, 108, 109, and 110, along with any attachments to those exhibits; and,
- c) Mission:data’s Hearing Exhibits 402, 403, 404, and 405.

8. Parties filed Statements of Position (SOPs) by July 12, 2024.

C. Procedural History

9. On September 22, 2023, Public Service filed its verified application seeking approval from the Commission “to deliver one-second time-stamped data through the Software Development Kit (“SDK”) established as a result of the Amended Advanced Grid Intelligence and Security (“AGIS”) Certificate of Public Convenience and Necessity (“CPCN”).”¹ Public Service further requested that it be allowed “to defer incremental costs necessary to maintain SDK and provide technical support to third parties in a regulatory asset without carrying costs.”²

10. On September 25, 2023, the Commission’s Notice of Application Filed was sent to all interested persons and entities.

11. UCA Staff both intervened as of right in this Proceeding.

12. Mission:data timely moved to permissively intervene in this Proceeding on October 25, 2023.

13. On November 1, 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.

14. By Decision No. R23-0828-I, issued December 11, 2023, the undersigned ALJ granted Mission:data’s Motion to Permissively Intervene and acknowledged UCA’s and Staff’s Interventions of Right. The parties to this Proceeding are thus Public Service, Staff, UCA, and Mission:data.

15. By Decision No. R24-0055-I, issued January 25, 2024, the undersigned ALJ approved and adopted the parties’ proposed procedural schedule to govern this Proceeding.

¹ Verified Application of Public Service Company of Colorado, filed Sept. 22, 2023, p. 1.

² *Id.*

Decision No. R24-0055-I set a deadline of April 18, 2024, by which the parties were to submit any stipulations or settlement agreements, and ordered the parties to file any settlement testimony or corrections to their pre-filed testimony by April 25, 2024.

16. Decision No. R24-0055-I also scheduled an evidentiary hearing to be held May 2-3, 2024, and extended the statutory time period within which a final Commission decision must issue by the full extent permitted by § 40-6-109.5(4), C.R.S., or up to and including November 15, 2024.

17. The parties subsequently worked toward a settlement agreement. At the parties' request, the ALJ issued Decision No. R24-0264-I on April 23, 2024, extending the deadline by which the parties were to advise the ALJ of any stipulations or settlement agreements to April 26, 2024, and the deadline by which the parties were to file their settlement testimony or corrections to their prefiled testimony to April 30, 2024.

18. Decision No. R24-0264-I also alerted the parties that the ALJ would likely have some questions about the terms of any settlement. In particular, Decision No. R24-0264-I suggested that the parties consider demonstrating the Company's technology and user experience to ensure its customers are able to navigate the Company's data.

19. Citing to the ALJ's suggestion, on April 25, 2024, Mission:data filed a Request for Subpoena to be served upon Public Service ordering the latter to produce certain documents and present certain testimony at the hearing.

20. Subsequently, on April 26, 2024, counsel for Public Service advised that it had reached a settlement agreement with Staff and UCA, but did not obtain Mission:data's consent to the settlement. Public Service, Staff, and UCA (the Settling Parties) filed their Joint Motion to

Approve Settlement Agreement (“Joint Motion”), along with their Settlement Agreement, on April 26, 2024.

21. Public Service also filed a response objecting to Mission:data’s subpoena request on April 29, 2024.

22. Based on the parties’ non-unanimous settlement agreement and representations concerning implementing a reasonable timeline for the submission of settlement testimony and the scheduling of an evidentiary hearing, the undersigned ALJ issued Decision No. R24-0290-I on May 1, 2024, vacating the May 2-3, 2024 evidentiary hearing and instead scheduling an evidentiary hearing on the Settling Parties’ Joint Motion to be held fully remotely June 13-14, 2024.

23. In addition, because Mission:data’s subpoena was specific to the May 2-3, 2024 evidentiary hearing, Decision No. R24-0290-I denied the subpoena request as moot.

24. On June 7, 2024, Mission:data filed its Response Opposing the Joint Motion. It argued, among other things, that the Settlement Agreement omits certain information required by the Amended AGIS Settlement, and improperly “diminishes and rewrites the Amended AGIS Settlement [the settlement reached in a previous Public Service proceeding] because it allows Public Service to discontinue the SDK and cut off access to technical support for the SDK.”³ Mission:data also took issue with Public Service’s “false assumption . . . that Direct Data Upload is infeasible.”⁴ Last, Mission:data challenged Public Service’s claim that the Settlement Agreement would advance ratepayers’ data access.⁵

³ Response of Mission:data Coalition Opposing Joint Motion to Approve Settlement Agreement, p. 2, filed June 7, 2024.

⁴ *Id.* at p. 3.

⁵ *Id.* at p. 4.

25. In response to the ALJ's suggestion that Public Service demonstrate its SDK, the parties submitted a Stipulation Regarding Software Demonstration on June 5, 2024. The parties agreed that during the first portion of the fully remote evidentiary hearing to be held June 13, 2024, a Public Service employee would provide a live demonstration of Public Service's SDK.

26. On June 13, 2024, the ALJ convened the fully remote evidentiary hearing as scheduled.

II. FACTUAL BACKGROUND

27. In Proceeding No. 16A-0588E, the Commission granted a CPCN to Public Service for implementation of its AGIS initiative, including advanced metering infrastructure ("AMI").⁶ In the years after the CPCN was granted, AMI technology evolved, incorporating new capabilities around Distributed Intelligence ("DI"). DI, or "edge computing," refers to the ability to perform analytics and execute decisions directly on the meter, which relies on highly granular data collection at the meter.⁷ The Commission subsequently directed Public Service to file a new application to amend its CPCN to address the use of DI and other issues of customer data access and use.⁸

28. On June 15, 2021, Public Service filed an Application for approval of changes amending the AGIS initiative CPCN. Among the changes it proposed was approval of (1) the Company's use of DI to further enhance benefits to its distribution operations; (2) the Company's use of DI because the development could "further enhance the value of information provided to customers regarding their energy use";⁹ (3) the Company's use of a WiFi

⁶ Decision No. C17-0556, issued July 25, 2017.

⁷ Decision No. C21-0378, issued June 29, 2021, at ¶ 7.

⁸ Proceeding No. 16A-0588E, Decision No. C21-0250, issued April 27, 2021; Decision No. C21-0378, issued June 29, 2021.

⁹ Verified Application, in Proceeding No. 21A-0279E, pp. 1-2, filed June 15, 2021.

radio system paired with IEEE 2030.5 communication protocol for home area network connectivity; and (4) the Company's use of "Green Button Connect My Data" to provide third parties with Company data.¹⁰ The June 2021 Application was heard by the Commission under Proceeding No. 21A-0279E.

29. Several entities intervened in Proceeding No. 21A-0279E, including Mission:data, UCA, and Staff, all of whom are parties to this Proceeding, as well.

30. On February 18, 2022, Public Service filed an Unopposed Joint Motion to Approve Unanimous Comprehensive Settlement Agreement in Proceeding No. 21A-0279E. By Decision No. R22-0131, issued March 7, 2022, the Settlement Agreement ("Amended AGIS Settlement") in Proceeding No. 21A-0279E was approved without modification.

31. Among the terms and provisions of the Amended AGIS Settlement reached in Proceeding No. 21A-0279E, the parties agreed to the following:

- a) The parties to Proceeding No. 21A-0279E agreed that the AGIS CPCN would be amended to reflect that the advanced meters selected by the Company enhanced both the Company's distribution operations and customers' energy management. The selected advanced meters employed WiFi-radio and IEEE 2030.5 meter function, as well as Home Area Network ("HAN") capability. Further, Public Service agreed not to seek cost recovery or deploy Customer-Facing DI Capabilities unless and until the Commission approved the Company's application for such cost recovery and/or deployment.¹¹
- b) The IEEE 2030.5 meter function using Itron¹²'s HAN application preloaded on the advance meter would incorporate specific functions "for the sharing of data with an interval of one second or greater."¹³ The parties agreed to support Public Service's deployment of a HAN mobile application for both iOS and Android smartphones.¹⁴ In addition, the Company agreed to deploy Bring Your Own

¹⁰ *Id.*

¹¹ Hearing Exhibit 400, Attachment MEM-1, Unanimous Comprehensive Settlement Agreement ("Amended AGIS Settlement") in Proceeding No. 21A-0279E, pp. 5-11, §§ I(A), (B), and (E).

¹² Itron is the meter vendor with whom Public Service has contracted. *See* Settlement Agreement ("Settlement Agreement"), attached as Attachment A to Joint Motion to Approve Settlement Agreement, filed Apr. 26, 2024, p. 4, § VI.

¹³ Amended AGIS Settlement, p. 12, § II(B).

¹⁴ *Id.* at p. 12, § II(C).

Device (“BYOD”) functionality to allow “IEEE 2030.5-compliant devices to connect to Advanced Meter via a two-step authentication process within 180 days” of Decision No. R22-0131 becoming final.¹⁵ To facilitate BYOD, Public Service also agreed to make SDK available to developers “free of charge under a . . . license.”¹⁶ The parties also acknowledged that Public Service cannot be responsible for factors that could impact a customer’s HAN connection, including issues such as network connectivity, and that the Company therefore cannot guarantee its customers’ success in using their HAN.¹⁷

- c) Public Service agreed to provide “an SDK with appropriate documentation including code examples and a working sample set of software sufficient to allow a third-party developer to implement either a hardware or software solution that will allow a . . . third party . . . to access the one-second data measured by the meter” which the Company agreed to make publicly available “at no cost to any interested party.”¹⁸ In addition, Public Service agreed to provide:
 - i. “Up to 2,000 man-hours of technical support in total on a first-come, first-serve basis, to third parties in support of SDK”; and
 - ii. Conduct “at least four (4) workshops for developers.”¹⁹
- d) Public Service also agreed to conduct a study of “the feasibility, costs, benefits, security implications, and other attributes of the various technical options to deliver one-second timestamped data, including, but not limited to, power, energy, voltage, volt-amps reactive data; applicable rate; meter identifier; and disaggregation insight data to customer-authorized third parties legally permitted to receive such data.”²⁰ The Company promised that the study would include an evaluation of “the direct upload functionality” described by Mission:data’s Mr. Murray in his testimony.²¹ In addition, the study would look at “the feasibility, costs, benefits, security implications, and other attributes of” the options for providing “sub-second voltage, current, power and VAR data from the meter to local and internet-based devices or services.”²² Public Service agreed to file a report detailing the findings of the study and discussing “the options considered.”²³
- e) The Amended AGIS Settlement in Proceeding No. 21A-0279E imposed a number of reporting requirements on Public Service, including:

¹⁵ *Id.* at p. 12, § II(D).

¹⁶ *Id.*

¹⁷ *Id.* at p. 13, § II(E).

¹⁸ *Id.* at p. 15, § III(A).

¹⁹ *Id.* at p. 15, § III(A)(1) & (2).

²⁰ *Id.* at p. 16, § IV(A).

²¹ *Id.*

²² *Id.*

²³ *Id.*

- i. Providing information about Grid-Facing DI Capabilities that Public Service intended to deploy in its Distribution System Plan (“DSP”);
 - ii. Mandating that the DSP include project estimates and goals; participant and budget estimates; a summary of the application process; projected benefits; pilot-specific policies; a summary of stakeholder involvement; and a “discussion of the evaluation, measurement, and verification approach.”²⁴
- f) Public Service’s DSP should include considerable retrospective reporting information about DI Capabilities, including a listing of applications deployed and who created it; the program the application supports; a description of the application and the process by which it was selected; the number of meters on which the application is deployed; and whether and how the application creator is entitled to use or access customer data. In addition, Public Service’s reports will describe the benefits to customers and a listing of any DI applications that have been uninstalled or terminated.²⁵

32. The Data Delivery Study (“DDS”) submitted in this Proceeding by Public Service was prepared in response to the Amended AGIS Settlement reached in Proceeding No. 21A-0279E.²⁶ Xcel contracted with Accenture to conduct the DDS.²⁷ The study looked at the feasibility of providing one-second and sub-second meter data to customer-authorized third parties via four pathways: direct data upload, Itron-hosted cloud environment, Xcel Energy-hosted cloud environment, and local polling application. The DDS concluded that although using the Itron cloud, the Xcel Energy cloud, and local polling applications were all feasible, the Direct Data Upload pathway was not.²⁸ Specifically, the study explained that “security restrictions imposed on the meter by Itron prevent[] direct connections to Third Party network locations” thereby making Direct Data Upload infeasible.²⁹

²⁴ *Id.* at p. 18, § VI(B)(1) &(2).

²⁵ *Id.* at pp. 19-21, § VI(D).

²⁶ Hearing Exhibit 102, Attachment JTM-2, Rev. 1, Xcel Energy CO DI Data Delivery Study, p. 3.

²⁷ *Id.* at p. 21.

²⁸ *Id.* at pp. 24-27.

²⁹ *Id.* at p. 24.

III. TERMS OF THE SETTLEMENT AGREEMENT

33. On April 26, 2024, a Joint Motion to Approve Settlement Agreement and Settlement Agreement was filed, joined by Public Service, Staff, and the UCA (each a “Settling Party” and collectively the “Settling Parties”) in this Proceeding. Settling Parties recommend the Commission approve the Company’s Application, as modified by the Settlement Agreement. Mission:data opposed the Settlement Agreement. Certain key provisions are addressed here.

34. As detailed more fully below, the Settlement Agreement reached between Public Service, Staff, and UCA in this Proceeding established a framework by which Public Service would continue to support the SDK, but modified some of the provisions reached in the Amended AGIS Settlement approved in Proceeding No. 21A-0279E.

35. Under the terms of the Settlement Agreement in this Proceeding, Public Service will continue to provide access to one-second data measured directly at the meter to third parties located remotely from the customer premises via its existing IEEE 2030.5 interface and local polling application. To do so, it will continue to offer the Gateway SDK, BYOD functionality, and Xcel Energy Launchpad.³⁰ Xcel Energy Launchpad, which is accessed through a customer’s online account portal, can be used to connect third-party devices or applications to the customer’s meter via a home energy network.³¹

36. The Settling Parties also agree that Public Service may propose to discontinue the SDK service and technical support on or after the earlier of December 31, 2027, or the use of the full 2,000 hours of technical support contemplated in Section III of the Amended AGIS

³⁰ Settlement Agreement (“Settlement Agreement”), attached as Attachment A to Joint Motion to Approve Settlement Agreement, filed Apr. 26, 2024, p. 2, § II.

³¹ HE 102, Direct Testimony of Joel T. Miller, p. 8:19-22 to 9:1-8.

Settlement.³² However, discontinuation may only be proposed based on conferral³³ and the use of the 90-Day Notice process,³⁴ to which Staff may file a Notice of Deficiency.³⁵

37. In the meantime, the Settling Parties agree that the ongoing operations and maintenance costs associated with the SDK, Xcel Energy Launchpad, and technical support may be deferred in an amount not to exceed \$1.25 million via a regulatory asset without carrying costs, beginning upon issuance of a final decision. The further treatment of the regulatory asset and any other future costs will be addressed in Public Service's next rate case.³⁶

38. Furthermore, the Settling Parties agree to the principle that data parity between the Company, its customers, and customers' authorized third parties is in the public interest, and customer data should be available in an open and non-discriminatory manner. Accordingly, Public Service agrees to make best efforts to limit HAN Agent updates to only those necessary for critical defects, security, and functionality enhancements, the latter of which will be limited to no more than two times annually to minimize costs and the impact to third-party applications.³⁷

39. Finally, if the Company seeks to use a different data delivery method than the local polling application, it agrees to seek Commission approval via a standalone or related application. It agrees that any application addressing alternative methods for data delivery shall also address the feasibility of Direct Data Upload and compare its proposed method to Direct Data Upload. It will further provide updates on developments related to Direct Data Upload through AGIS Annual

³² *Id.* at p. 3, § IV.

³³ Conferral is to occur with the Settling Parties and the parties to Proceeding Nos. 23A-0471E and 21A-0279E.

³⁴ Hearing Exhibit 200, Answer Testimony of Eric Haglund, p. 5, lines 19-21 and p. 21, line 1- p. 22, line 17; Hearing Exhibit 103, Rebuttal Testimony of Michael V. Pascucci, p. 6, line 3 and p. 8, line 1 – p. 9, line 6.

³⁵ Settlement Agreement, p. 3, § IV.

³⁶ *Id.*

³⁷ *Id.* at pp. 4-5, § VII.

Reports. The Company also commits to make reasonable efforts to work with Itron as the meter vendor to understand solutions, and to evaluate other avenues to implement Direct Data Upload.³⁸

IV. RELEVANT LAW

A. Commission Jurisdiction

40. The Commission has authority to regulate public utilities, and jurisdiction to enforce statutes affecting public utilities. Colo. Const. art. XXV; and §§ 40-3-102, 40-7-101, C.R.S. And, the Commission has general authority to decide other matters, such as an application seeking approval of a qualified retail utility's software data kit, under Rule 3002(a)(XIX) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* ("CCR") 723-3.

B. Legal Standards

41. Rule 1408(a) of the Rules of Practice and Procedure, 4 CCR 723-1, encourages parties to settle contested proceedings. Settlement agreements are to be reduced to writing and must be filed with a motion seeking approval of the settlement.³⁹ The Commission may, within its discretion, approve, disapprove, or modify any settlement agreement reached by the parties.⁴⁰

42. In prior settled cases, the Commission has evaluated the settlement terms to determine whether "the settlement will result in rates that are just and reasonable."⁴¹ The Commission has stated that it believes it "has an obligation to review all the terms contained in a settlement agreement to ensure that they comply to the greatest extent possible with applicable regulatory principles, and are just and reasonable."⁴² Further, the Commission has considered

³⁸ *Id.*

³⁹ Rule 1408(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁴⁰ Rule 1408(b), 4 CCR 723-1.

⁴¹ Decision No. C09-0595, ¶ 81, issued June 9, 2009, in Proceeding No. 08S-0520E.

⁴² Decision No. C06-0259, ¶ 10, issued Mar. 15, 2006, in Proceeding No. 05S-0264G.

whether the agreed-upon rates are “within the range of recommended increases proposed by the parties . . . and reflect[] a meaningful reduction in the proposed rates compared with” those initially sought by the utility in the proceeding.⁴³ The Commission has also considered whether a proposed settlement is in the public interest.⁴⁴ The settling parties have the burden of proving by a preponderance of the evidence that the Settlement is just and reasonable.⁴⁵

43. In rendering this Decision, the ALJ has carefully reviewed and considered all the evidence introduced by the Parties during the hearing, including the testimony and hearing exhibits, even if this Decision does not specifically address all of the evidence presented, or every nuance of each party’s position on each issue. Moreover, the ALJ has considered all the legal arguments set forth in the post-hearing statements of position, even if the Decision does not explicitly address every legal argument. In rendering this Decision, the ALJ has evaluated the credibility of all the witnesses and hearing exhibits and weighed the evidence.

V. OPPOSITION TO THE SETTLEMENT AGREEMENT

44. Mission:data states that it does not necessarily oppose the approval of the SDK or the cost recovery provisions of the Settlement Agreement. Instead, it strongly opposes the Settlement Agreement as a whole, recommending the Commission reject both the Settlement Agreement and the Application because they result in the Company being non-compliant with certain terms from the Amended AGIS Settlement in Proceeding No. 21A-0279E; serve to inappropriately modify the Amended AGIS Settlement; and approve Company actions that are grounded on false and misleading assumptions.

⁴³ Decision No. C09-0595, ¶ 81.

⁴⁴ See Decision No. R15-1292, ¶ 165, issued Dec. 8, 2015, in Proceeding No. 15A-0424E.

⁴⁵ § 13-25-127(1), C.R.S., and Rule 1500, 4 CCR 723-1, establish the burden of proof for a party which asks the Commission to adopt its advocated position. See also, Decision No. C06-0786, ¶ 40 and n.23, issued July 3, 2006, in Proceeding No 05A-072E.

45. Mission:data raises three primary arguments against approval of the Settlement Agreement: (1) the Settlement Agreement does not comply with the Amended AGIS Settlement reached between these parties and other entities in March 2022; (2) the Settlement Agreement in this Proceeding improperly modifies terms of the Amended AGIS Settlement; and (3) the Settlement Agreement rests on the false assumption that Direct Data Upload (“DDU”) is infeasible.

46. Ultimately, Mission:data contends that approving the Settlement Agreement and Application will relieve Public Service of the obligation to meaningfully address data parity, with the result that Public Service will gain inappropriate control over customer data and energy management tools and innovation. Mission:data thus recommends the Commission reject the Application and Settlement Agreement in this Proceeding entirely, and that Public Service be required to re-file its application with a complete data delivery study within 18-24 months. Each of Mission:data’s arguments will be addressed in turn below.

A. Noncompliance with the Amended AGIS Settlement

47. Decision No. R22-0131, issued March 7, 2022, approved the Amended AGIS Statement in Proceeding No. 21A-0279E.⁴⁶ Section IV(A) of the Amended AGIS Settlement included the following language, which is the origin of this Application:

The Company will study the feasibility, costs, benefits, security implications, and other attributes of the various technical options to deliver one-second timestamped data, including, but not limited to, power, energy, voltage, volt-amps reactive data; applicable rate; meter identifier; and disaggregation insight data to customer-authorized third parties legally permitted to receive such data. [...] Within six (6) months of filing such report, the Company will file an application consistent with Rule 3002(a)(xix) of the Commission’s Electric Rules to submit the Company’s

⁴⁶ Hearing Exhibit 400, Attachment MEM-01.

recommendation, which could include the request for implementing its recommendation. The filing should also address:

1. Easy, open, non-discriminatory access for customer-authorized third parties;
2. Data parity between the Company and customers;
3. The reasonable terms and conditions under which customer-authorized third parties are eligible; and,
4. The detailed customer authorization process and user experience.

2. Arguments

48. Mission:data argues that a fundamental flaw of the Settlement Agreement and the Application more broadly is that it fails to comply with the above-cited paragraph of the Amended AGIS Settlement. First, Mission:data argues that the Company failed to address how to share with authorized third parties a customer's applicable rate and disaggregation insight data. It asserts that Public Service inappropriately added a qualification that the Data Delivery Study ("DDS") should focus on data that is "native" to the meter, and therefore the Company is out of compliance with Electric Rule 3027(d) which requires it to provide customer data in electronic, machine-readable formats.⁴⁷ Second, Mission:data argues that the Company did not include terms or conditions for third parties to be eligible to access customer data. Third, Mission:data contends that Public Service interprets data parity too narrowly and failed to assess how to create data parity more broadly — which could include using tools other than the SDK or local polling application — focusing instead of how to create data parity when using the local polling application. Mission:data raises that Public Service thus fails to meet the requirements of the Amended AGIS Settlement, resulting in practices that may unfairly limit third party access.

⁴⁷ Statement of Position of Mission:data Coalition ("Mission:data's SOP"), pp. 9-10, § III(b), filed July 12, 2024.

49. The Joint Statement of Position filed by Public Service and UCA (“Joint SOP”) argues that the DDS was consistent with the Amended AGIS Settlement and Mission:data did not meet its burden of proof to show that the settlement terms were violated. It explains that rate information is not a native data element available at either one-second or sub-second intervals that can be shared directly by the meter. It states that insights from energy disaggregation are similarly not developed on the meter itself. Accordingly, it is not possible to share this data through three of the technologies in the DDS and therefore there was nothing for the study to address. As to terms and conditions for customer-authorized third parties, the Joint SOP states that customers must agree to the terms, not third parties, and therefore Public Service is not limiting third-party access. Finally, the Joint SOP argues that the Company receives the same access to customer data as third parties do when accessing the SDK or local polling application, and they do not receive unique or additional parameters.

3. Findings, Analysis, and Conclusions

50. Mission:data contends that Public Service’s reasons for not “fully” studying the sharing of applicable rate and disaggregation insights are unreasonable. Mission:data argues that the Amended AGIS Settlement was not limited to data that is “native to the meter.” Mission:data reasons that by self-limiting the scope of the study to native data, Public Service violates the terms of the Amended AGIS Settlement, and suggests that Public Service should have known when it signed the Amended AGIS Settlement that certain applicable rates and disaggregation insights might not be “native” to the meter. Mission:data maintains that the meters are simply computers and therefore capable of storing and transmitting data in addition to “native data.”

51. But, in response, Public Service has stated that the information Mission:data argues should have been included in the study — customers’ “applicable rate and disaggregation insight

data” — “are not currently available on the meter” making it impossible “for the study to produce an outcome for either.”⁴⁸ And, while Mission:data criticizes the study for not adequately addressing the sharing of a customer’s applicable rate, Mr. Miller, on behalf of Public Service explained that because one-second and sub-second intervals of rate data are not native to the meter, the data was not available *to be shared* and therefore could not be further discussed in the study.⁴⁹ In other words, data on the tariffs or rates which would apply to a customers’ usage, and raw data on the customer energy usage itself (which is native to the meter), are not similarly situated and could not necessarily be shared in coordination with each other via the same tools or pathways.

52. Although Mission:data postures that such information *could* be included in the study and ultimately made available to third parties, it offers no evidence supporting its contention that the sought-after data, given that it is not native to the meter, could be shared via the tools or pathways explored through the DDS. Absent such a showing, Mission:data has not established that Public Service’s position to limit the scope of the DDS is unreasonable.

53. Moreover, it is not clear that “disaggregation insights” are in fact “customer data” as defined by the Commission’s Electric Rules. “Customer data” is defined by the Electric Rules as follows:

(k) “Customer data” means customer-specific data or information, excluding personal information as defined in paragraph 1004(x), that is:

(I) collected from the electric meter by the utility and stored in its data systems (e.g., kWh, kW, voltage, VARs and power factor);

(II) combined with customer-specific energy usage information on bills issued to the customer for regulated utility service when not publicly or lawfully available to the general public; or

⁴⁸ Hearing Exhibit 104, Rebuttal Testimony of Joel T. Miller, p. 11, lines 8-10.

⁴⁹ *Id.* at p. 11, line 16 – p. 12, line 5.

(III) about the customer's participation in regulated utility programs, such as renewable energy, demand-side management, load management, or energy efficiency programs.

The definition does not explicitly mention "disaggregation insights" and the term appears to be outside the definitional scope of "customer data," which suggests raw data more than insights gleaned from that data. Because it does not fall within the definition, it is not unreasonable for Public Service not to transfer this customer information.

54. The ALJ therefore finds and concludes that the Settling Parties have established that the scope of the Company's study with the "native" limiter was reasonable. The ALJ rejects Mission:data's contention that the Company acted unreasonably in limiting the scope of the study to "native" data.

55. With respect to Mission:data's position that failing to provide applicable rate and disaggregation data jeopardizes data parity, the ALJ does not disagree that the provision of such information could be beneficial and useful to customers and third-party developers alike. Indeed, it may be prudent in the future to examine Public Service's ability to collect and share such data. Notably, at some future date, the Commission may wish to evaluate holistically the types of data that, if made available to customers and third parties, would increase residential and business customers' ability to increase load flexibility by responding to price or other signals. This process may require identifying options for data to be shared beyond those identified in the DDS. Such an evaluation may become particularly important as more advanced rate designs — such as time-of-use and managed charging — are being deployed and refined. Mission:data is not incorrect in arguing that there may potentially be a reasonable need for this information in the future. That said, there is insufficient evidence to scope such a specific requirement here.

56. More importantly, though, the posture of this Proceeding is not to examine the optimal dissemination of data. Rather, the focus here is narrow: Is the Settlement Agreement just, reasonable, and in the public interest? Also, within the scope of this Proceeding — to approve the Application as modified by the Settlement Agreement and determine whether that Settlement Agreement is just, reasonable, and in the public interest — Mission:data has not offered sufficient evidence demonstrating the immediate need for the sharing of the additional data categories to warrant rejection of the Settlement Agreement.

57. For these reasons, the ALJ finds and concludes that the provisions in the Settlement Agreement permitting Public Service to proceed with the existing DDS are just, reasonable, and in the public interest.

B. Modification of the Amended AGIS Settlement

58. The Settlement Agreement authorizes Public Service to propose to discontinue the SDK service and technical support on or after the earlier of December 31, 2027, or the use of the full 2,000 hours of technical support addressed in Section III of the Amended AGIS Settlement. Mission:data opposes the discontinuation of Public Service’s SDK service and technical support.

1. Arguments

59. Mission:data argues that because the Amended AGIS Settlement does not include a time limitation for sunseting the SDK service and technical support, allowing Public Service to propose to discontinue those services via the process laid out in the Settlement Agreement undermines the settlement process.⁵⁰ Mission:data also asserts that permitting Public Service to back away from the agreement it reached in the Amended AGIS Settlement by cutting the SDK

⁵⁰ Mission:data’s SOP, pp. 30-31, § VII(b).

service and technical support it had been providing would have a chilling effect on future settlements.⁵¹

60. In contrast, the Joint SOP counters that Public Service has fulfilled the terms of the Amended AGIS Settlement by providing workshops and technical assistance.⁵² It argues that allowing it the option to propose to terminate the technical support — of which only 100 out of 2,000 hours have been used — is fiscally responsible. In fact, it is even unclear whether any Mission:data members have used any of the offered technical support. Moreover, the Joint SOP asserts that the 90-Day Notice process put forth by the Settlement Agreement allows comments from multiple parties and provides Staff the opportunity to escalate the issue to the Commission if a resolution is not possible through this less formal process. The Joint SOP also argues that the Amended AGIS Settlement is silent as to the time of performance, and that it would be patently unreasonable to consider the term providing 2,000 hours of technical support to run in perpetuity.

2. Findings, Analysis, and Conclusions

61. At the evidentiary hearing on the Joint Motion to Approve the Settlement, Mr. Pascucci explained that discontinuing the technical support agreed to in the earlier Amended AGIS Settlement was appropriate because only 100 hours — a small fraction of the available 2,000 hours of technical support — had been used.⁵³ He noted that the Company had made technical support available, but that developers rarely took advantage of the service.

⁵¹ In its Response Opposing Joint Motion to Approve Settlement Agreement, filed June 7, 2024, Mission:data also asserted that its due process may be violated to the extent that Staff is the only party entitled to petition the Commission for redress regarding the continuation of the SDK service and technical support. However, Mission:data did not reassert and brief this argument in its SOP. The ALJ therefore presumes that Mission:data has abandoned this argument.

⁵² Joint SOP, pp. 18-22.

⁵³ Hearing Exhibit 101, Direct Testimony of Michael V. Pascucci, p. 9, lines 7-20; Hearing Exhibit 105, Settlement Testimony of Michael V. Pascucci, p. 9, line 17 – p. 10, line 2.

62. Both Mr. Pascucci and Mr. Miller testified at the evidentiary hearing that the service costs Public Service approximately \$1 million per year to maintain. When asked at the evidentiary hearing how many customers had taken advantage of the SDK, Mr. Pascucci could not provide a precise number but indicated it is very small and “much less than 1 million.”

63. Moreover, he explained, even after the discontinuation of technical support the *data itself* will still be available to any interested third-party developer. Under the circumstances and given the past usage history, the Settling Parties agreed that Public Service no longer needed to provide technical support.

64. The ALJ finds this explanation persuasive. The ALJ notes that any service provided by Public Service must be supported by the Company’s ratepayers. If the service is not being used, then ratepayers are effectively paying for nothing but the *potential* for service.

65. Moreover, as the Joint SOP points out, Mission:data offered no evidence whatsoever suggesting that its members and/or affiliates had either used the service in the past or would need the service in the future.⁵⁴ The ALJ therefore finds and concludes that it is unreasonable for Mission:data to expect the Company — and hence its ratepayers — to provide and pay for a service which few, if any, use.

66. Finally, as Public Service points out, despite the tone of imminent discontinuation coloring Mission:data’s SOP, the Settlement Agreement does not provide for the immediate termination of the service and technical support program, nor does it provide for the discontinuation of the service to occur without adequate notice. To the contrary, Public Service’s SDK service and technical support will be available at least until December 31, 2027 — more than three years after the date of the Settlement Agreement — or until the 2,000 hours of service agreed

⁵⁴ Joint SOP, p. 21, § III(B).

to in the Amended AGIS Settlement are used up, if that occurs prior to December 31, 2027.⁵⁵ Even then, Public Service has agreed not to discontinue the service without providing 90-day notice, to which Staff can object if Staff deems the notice insufficient.⁵⁶ In other words, Mission:data's members will have full access to Public Service's SDK service and technical assistance until at least the end of 2027, unless they use up all the service hours they agreed to in the Amended AGIS Settlement before then.

67. For these reasons, the ALJ rejects Mission:data's argument that approving the Settlement Agreement would inappropriately modify the Amended AGIS Settlement without the consent of the parties. The Settlement Agreement term proposing to set forth a more specific timeframe is not inconsistent with the language of the Amended AGIS Settlement. Mission:data was a party to both proceedings and has not contested that only a small amount of technical support has been used by potentially interested software developers. Having a process by which the Company can propose to terminate a service that is not being used — a process which has been approved by the Commission in numerous proceedings to facilitate stakeholder collaboration — prevents good ratepayer money from following bad.

68. Accordingly, the ALJ finds that the Settlement Agreement's provisions permitting the possibility of sunseting Public Services' service and technical support is just, reasonable, and in the public interest.

⁵⁵ Settlement Agreement, p. 3, § IV.

⁵⁶ *Id.*

C. The Settlement Agreement and Application Include False Assumptions

1. Arguments

69. Mission:data states that the DDS includes numerous false assumptions to determine that DDU is not technically feasible.⁵⁷ First, Mission:data states that using the local polling application preferred by the Company creates a customer experience barrier because the customer will still have to purchase and install a separate device to continuously read data on the home energy network, which removes the efficiency of attempting to rely on ubiquitous smartphones, and limits opportunities for customers with multiple meters.

70. Second, Mission:data raises that the Data Delivery Study relied on a false assumption — undisclosed to stakeholders before the study was filed — that third parties would be required to develop their own data delivery applications which may be of dubious quality. Mission:data states that this assertion is undercut by a statement in the study itself that these applications could be developed by Public Service or Itron, thus creating less cybersecurity risk. Mission:data also alleges that Public Service makes false assumptions about DDU being infeasible, citing examples of regulatory processes in other states involving different meter vendors that also rely on Linux operating systems, and critiquing the Company's description of the hardware and software architecture at issue.

71. Finally, Mission:data argues that the DDS was overly reliant on conclusory statements from Itron, for which there was no independent evaluation. It asserts that the Company has inappropriately positioned Itron as a gatekeeper with a potential financial benefit from limiting data-sharing to third parties. It adds that questions about whether Commission direction would

⁵⁷ Response of Mission:data Coalition Opposing Joint Motion to Approve Settlement Agreement, p. 3, filed June 7, 2024.

affect contractual leverage are speculative and more appropriate to rate recovery than feasibility. Ultimately, it argues that the Application is not in the public interest and that the Settlement Agreement does not cure these deficiencies.

72. In response to these assertions, the Joint SOP argues that Mission:data is motivated by potential financial benefit to its software company members and there is no guarantee that requiring a new study would reach different conclusions or be in the best interests of Public Service's customers. It argues that Mission:data's examples of DDU in other states rely on different metering infrastructure and remain exploratory, and therefore do not constitute credible evidence that a new study would lead to different results. Finally, the Joint SOP argues that Mission:data incorrectly characterizes Itron's role in data transfer, as Itron does not have access to customer data either through current contracts or through the DDU method.

2. Findings, Analysis, and Conclusions

73. Mission:data makes a number of unsupported arguments challenging Public Service's DDS. It attacks the underlying assumptions of the DDS and characterizes statements made in the study as "conclusory." Yet, Mission:data fails to make an adequate showing that the underlying assumptions are false. Most notably, Mission:data clings to its assertion that DDU is infeasible, but offers little to support its belief that DDU can be achieved at this time. Moreover, as Public Service implies, Mission:data's remedy, should it be successful in challenging the DDS, is for another study to be conducted. But without a factual showing that the assumptions underlying the DDS were inaccurate, or sufficient guidance as to how to frame direction on what level of rigor would meet Mission:data's expectations for complying with the Amended AGIS Settlement, it is merely speculative whether simply ordering a new study would reach a different result or conclusion. The ALJ notes that, similar to extending the availability of service and technical

support, any new study would be an expense passed on to ratepayers. This strikes the ALJ as unnecessary given that the DDS, however imperfect, has already been completed. The ALJ finds and concludes it would be improper to charge ratepayers for yet another study to achieve the goal of satisfying Mission:Data's belief that the study could have been better.

74. That said, based on discovery, it appears to be true that Public Service knew Itron was not offering DDU before it committed to provisions in the Amended AGIS Settlement on the DDS.

75. Likewise, the statement in the DDS that there may have been a more appropriate way of providing data that reduced cybersecurity concerns, which was agreed to by Public Service's witness at hearing, was also troubling because it throws into question the completeness of the study and the transparency of Public Service's pre-filing engagement.

76. Ultimately, though, the DDS makes clear that the limitations on the Itron Cloud Receiver's ability to send data are tied to legitimate security issues and the limitations were put in place to ensure customer data is not breached or sent to unauthorized third parties. As stated in the DDS, when sending data to third parties ("non-local resources" in the parlance of the DDS), "the network interface on the meter only allows for data to be sent to Itron-licensed Receivers. Data cannot be sent directly to any other non-local network address from the meter per Itron's design."⁵⁸ However frustrating Mission:Data may find the limitations on data dissemination and however possible it may be for more data to be disseminated, the ALJ finds that the limitations appear to be reasonable security protections put in place by Public Service's vendor, Itron, for the purposes of protecting customer data and information. Given that there is a legitimate purpose for the limitation, the ALJ cannot say that its basis as an underlying assumption in the DDS warrants

⁵⁸ Hearing Exhibit 101, Attachment JTM-1, Data Feasibility Study, March 2023, p. 36.

the rejection of the Settlement Agreement reached by all parties but Mission:data in this Proceeding.

D. Summary and Conclusion

77. The ALJ notes that Mission:data does not generally oppose the SDK and cost recovery resolution of the settlement. It is undisputed that the technical support for SDK, despite being available, has been rarely used. Consequently, granting Public Service the option to terminate technical support services at the end of 2027, after properly notifying the Commission of its intent to do so along with any other future changes to its data delivery options, is reasonable and appropriate.

78. Further, the core provisions of the Settlement Agreement are in the public interest to the extent they promote fiscal discipline and provide ongoing transparency. Notably, the Settlement Agreement will save ratepayers the expense of paying for a service that was used very rarely.

79. Nonetheless, the ALJ takes seriously policy concerns raised by Mission:data. Public Service's software demonstration, which immediately preceded the evidentiary hearing, illuminated how customers can access Public Service's software tools. This process requires several steps through Public Service's online customer account portal, including selecting the correct billing account, then selecting the action of managing that account, and then modifying authorized devices. Public Service has acknowledged that only 3,000 accounts across its service territories are enrolled in Xcel Energy Launchpad, and it is unclear how they may come to know how to take these steps. At hearing, Witness Miller for Public Service also stated that he was unaware of any third-party applications on common platforms, such as the Apple App Store or Google Play, that were developed using the SDK. Without a clear and easy path for customers to

establish the connection that would allow them to share their data with third parties, it is unclear whether third-party application developers would have an incentive to market to Public Service customers, and makes the limited use of SDK technical support somewhat unsurprising.

80. However, these and other policy questions raised by Mission:data and suggested in the course of the demonstration are perhaps more appropriate for the Commission to address in the context of another appropriate proceeding, such as a DSP, which could consider whether data access is a barrier to effective grid planning and integration of distributed energy resources, including through non-wires alternatives.

81. The Commission has an independent duty to determine matters that are within the public interest.⁵⁹

82. 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 testimony and evidence offered at the evidentiary hearing; the Joint Motion to Approve and Response opposing same; the Parties' SOPs; and the terms and conditions of Settlement Agreement. The ALJ has thus duly considered the positions of the Parties in this matter and weighed the evidence presented.

83. Although the ALJ has reviewed and considered all of the arguments, issues, and factual discussion raised by the Parties in their briefs, testimony, and oral arguments made at the evidentiary hearing, this Decision does not address and discuss each and every argument and issue raised by the Parties. Any arguments, issues, or factual discussions not expressly addressed are rejected as unpersuasive and would not alter the outcome of this Decision.

⁵⁹ See, *Caldwell v. Pub. Utils. Comm'n*, 692 P.2d 1085, 1089 (Colo. 1984).

84. Based on a review of the entire record, the undersigned finds that approval of the Application as modified by the Settlement Agreement is in the public interest. The Settlement Agreement proposes a fair and timely resolution of all contested issues and substantial evidence shows that its terms will benefit the Settling Parties and Public Service's customers.

85. For the reasons discussed above, the ALJ finds and concludes by a preponderance of the evidence that the Application, as modified by the Settlement Agreement, is reasonable, just and in the public interest.

86. Accordingly, the Joint Motion to Approve Settlement Agreement will be granted. The undersigned ALJ approves the Settlement Agreement between Applicant Public Service, Staff, and UCA.

VI. ORDER

A. It Is Ordered That:

1. The Joint Motion to Approve Settlement Agreement filed by Public Service Company of Colorado, Trial Staff of the Colorado Public Utilities Commission, and the Office of the Utility Consumer Advocate (the "Settling Parties") on April 26, 2024, is granted consistent with the discussion above.

2. The Settlement Agreement filed by the Settling Parties contemporaneously with the Joint Motion to Approve Settlement Agreement, and attached to this Decision as Appendix A, is approved without modification, consistent with the discussion above.

3. Public Service Company of Colorado's Verified Application seeking approval of its request to deliver one-second time-stamped data through its Software Development Kit ("SDK") as a result of the Amended Advanced Grid Intelligence ("AGIS") Certificate of Public

Convenience and Necessity (“CPCN”), filed September 22, 2023, and as amended by Settlement Agreement approved above, is granted consistent with the discussion above.

4. This Recommended Decision will 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 7 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.

7. Response time to exceptions is shortened to seven days.

(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