

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

PROCEEDING NO. 24A-0327E

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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 2023 THROUGH DECEMBER 2023 THAT ARE RECOVERED THROUGH THE ELECTRIC COMMODITY ADJUSTMENT AND PURCHASED CAPACITY COSTS RECOVERED THROUGH THE PURCHASED CAPACITY COST ADJUSTMENT FOR THE SAME PERIOD AND APPROVING THE CALCULATION OF 2023 SHORT TERM SALES MARGINS.

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**COMMISSION DECISION ADDRESSING APPLICATIONS  
FOR REHEARING, REARGUMENT, OR  
RECONSIDERATION OF DECISION NO. C25-0374**

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Issued Date: June 26, 2025

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**I. BY THE COMMISSION****A. Statement**

1. In this Proceeding, Public Service Company of Colorado (“Public Service” or the “Company”) sought approval to recover approximately \$755 million in fuel and energy costs for calendar year 2023 through the Electric Commodity Adjustment (“ECA”), \$84 million in purchased capacity costs through the Purchased Capacity Cost Adjustment (“PCCA”), as well as gas hedging costs and short-term sales margins.

2. The Administrative Law Judge (“ALJ”) who heard the case, through Recommended Decision No. R25-0176, issued on March 14, 2025, approved a non-unanimous settlement agreement between Public Service and Trial Staff of the Commission (“Trial Staff”) and rejected the Office of the Utility Consumer Advocate’s (“UCA”) recommendation for disallowances totaling approximately \$3.65 million based on claims of uneconomic dispatch.

3. UCA filed exceptions arguing that the ALJ misapplied the burden of proof framework by failing to independently assess whether UCA had met its burden before considering the Company’s rebuttal evidence. UCA maintained that it identified 90 specific instances of uneconomic dispatch based on the Company’s own hourly generation data and that the ALJ’s reasoning improperly collapsed the burden-shifting framework by discrediting UCA’s analysis based on rebuttal evidence without first determining that UCA had failed to make a *prima facie* showing.

4. UCA also challenged the adequacy of the Recommended Decision’s additional reporting requirement that the Company indicate in its filed data on hourly generation and curtailment data whether there was a Southwest Power Pool-Western Energy Imbalance Services (“SPP-WEIS”) curtailment instruction for any generation units. UCA requested the Commission

instead adopt UCA's recommendation, as proposed in its statement of position ("SOP") that the Company provide reports identifying each instance when Company operators were dispatching CT's and also curtailing renewable generation or injecting power into storage and provide justifications for these actions.

5. Through Decision No. C25-0374, issued on May 15, 2025, the Commission denied UCA's exceptions.

6. On June 4, 2025, UCA and Public Service filed Applications for Rehearing, Reargument, or Reconsideration ("ARRR") of Decision No. C25-0374. By this Decision we deny UCA's ARRR and grant Public Service's request to clarify Paragraph 17 and Ordering Paragraph 2 of Decision No. C25-0374.

## **B. Discussion**

### **1. Decision No. C25-0374**

7. The Commission considered UCA's argument in Exceptions regarding burden of proof and concluded that UCA's burden-shifting arguments were confused, essentially suggesting the Commission should evaluate record evidence at the time the evidence was filed into the docket, rather than analyzing it as a whole after the evidentiary hearing.

8. The Commission acknowledged the value of knowing certain instances when combustion turbines ("CT") are running at the same time the Company is pumping Cabin Creek or curtailing renewables and directed Public Service to file, as part of its direct case in the next ECA/PCCA recovery proceeding, a narrative explaining the top ten such instances, by dollar amount.

9. The Commission upheld the ALJ's determination that recording the instances when the Company is acting on directives from SPP-WEIS is appropriate and denied UCA's request for

additional reporting. The Commission found that UCA failed to provide any additional support for its request that the Company provide explanatory information about each instance of running CTs while curtailing renewables or pumping Cabin Creek because the value of that information has not been demonstrated and comes at a cost of a significant burden on system operators.

## **2. Applications for Rehearing, Reargument, or Reconsideration**

### **a. UCA**

10. In its ARRR, UCA asserts that the ALJ and, now the Commission, misapplied the agency's burden of proof, reiterating the arguments it made in its exceptions. UCA contends that it was incorrect for the Commission to conclude that it must evaluate evidence after the conclusion of the evidentiary hearing and criticizes the Commission for not citing any law indicating that evidence should be considered after the evidentiary hearing, not before. UCA contends that the Commission's approach will mean that applicants will not submit robust direct cases and that "parties like UCA will be disincentivized to seek out information and raise challenges to the Company's direct case if the intervenor must then also overcome the Company's rebuttal case and information only elucidated through the intervenor's discovery process."

11. UCA argues that in reaching its conclusion that the instances of simultaneous running of CTs and curtailment of renewables do not indicate imprudent dispatch, the Commission cannot rely on the narrative Public Service provided for eight of the 90 challenged coincidences, the statements from Trial Staff that it investigated and had no issue with all 90 of those coincidences, or reasons Public Service provided as to why these coincidences may have occurred.

12. We deny UCA on this point. First, the Commission certainly can rely on the narrative and explanations provided by the Company as well as Trial Staff's testimony that it reviewed the 90 instances and found nothing concerning as evidence to conclude that there was no

imprudent dispatch. More significant, at least to the arguments UCA raises here, the ALJ and Commission have now determined twice that simply pointing out 90 coincidental periods in a field of roughly 1,000,000 data points<sup>1</sup> does not by itself raise a question as to the imprudence of the dispatch, particularly when there are many possible legitimate reasons why those coincidences occur. UCA fails to address this point, instead asserting that it had met its burden and therefore its argument is somehow unassailable by the Company's rebuttal testimony.

13. Any applicant may use its rebuttal testimony to point out flaws in an intervenor's answer testimony, much as Public Service did in this Proceeding. The applicant may even contend that the intervenor's entire argument is unpersuasive. In the same vein, when considering the evidence as a whole, an ALJ, or the Commission, may, as it did here, conclude that the intervenor's argument is unconvincing. The simple fact that an argument is presented in answer testimony by an intervenor does not somehow insulate that argument from critical review. UCA's arguments have been presented and rejected before, and UCA offers no additional support or information that indicates the Commission erred in its conclusions.

14. As outlined in the Recommended Decision, during the hearing Public Service discussed why there may be coincident periods where CTs run at the same time renewables were curtailed or Cabin Creek pumped. Those reasons include "testing, must-run conditions for transmission reliability, the need for reserves, renewable energy volatility, and transmission constraints (among others)."<sup>2</sup> A detailed list is included in the Recommended Decision at Paragraph 70. The Recommended Decision concluded that the Company acted prudently as to the remaining 82 events at issue based on the detailed evidence on the eight challenged events, the

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<sup>1</sup> Hr. Tr. 1-9-2025, p. 137:13-18.

<sup>2</sup> Recommended Decision at ¶ 87.

Company's Rebuttal Testimony, the record as a whole, and Staff's prudence investigation and resulting conclusion.<sup>3</sup> In light of this evidence, UCA has not raised any arguments that convince us the ALJ erred in her analysis.

15. In sum, we remain unconvinced that either the ALJ or the Commission misapplied the burden of proof in this Proceeding.

16. UCA also asks the Commission to reconsider its decision denying UCA's request that Public Service be required to provide a report on each instance when CTs are running at the same time renewables are curtailed:

This decision point of the Commission's Order appears to misconstrue UCA's original recommendation. In its SOP, UCA argued that the Company only be required to report on the *instances* when the Company ran CTs when it curtailed renewable energy or pumped Cabin Creek. UCA did not recommend the Company then be required to explain each of these instances; rather, only that they be identified so that these instances were readily known and could be potentially explored by the parties or the Commission.<sup>4</sup> [*emphasis in original*]

17. UCA's request is confusing because the citation in its SOP that UCA refers to indicates a request that the Company be required to provide a justification for, not just a listing of, these instances:

The reports should identify each instance when its operators were dispatching CTs and/or Plains End and also curtailing renewable generation or injecting power into storage at either Cabin Creek or into batteries *and provide justification for its actions*. These periodic reports should then be consolidated into an annual report at the end of the year to be filed with the annual ECA filing.<sup>5</sup> [*emphasis added*]

18. UCA's request in its SOP was thoroughly considered by the ALJ in Decision No. R25-0176 and rejected because the potential information provided in these reports could not justify

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<sup>3</sup> Hr. Tr. 1-9-2025 at p. 246: 14-21 (Staff witness O'Neil testifying that Staff had examined the 90 instances and found no concerns).

<sup>4</sup> UCA RRR at pp. 10-11, citing to its SOP p. 27.

<sup>5</sup> UCA SOP p. 27.

the additional burden on system operators. The Commission also considered this request in exceptions and upheld the ALJ. UCA's RRR does not provide any additional information that could be used to support a reversal of this decision, and, in fact, contradicts UCA's own SOP.

19. If UCA's intent is to request the Commission require the Company to provide a listing of instances in which CTs are dispatched at the same time renewables are curtailed or Cabin Creek is being pumped, this is contained in the spreadsheet the Company already provides a report with each ECA review. It is this spreadsheet that UCA's witness Neil used to create his list of 90 proposed disallowances from ECA recovery. UCA does not explain why the Commission should direct the Company to create an additional report from information that the Company is already providing. Furthermore, in cross examination in this proceeding, UCA witness Neil confirmed that he was able to take the information provided and create the very list that UCA requests in RRR.<sup>6</sup>

20. We deny UCA on this point. UCA's request is unclear and without support whether UCA is requesting reporting with explanations, as indicated in its SOP, or UCA's intent is simply a listing of instances distilled from the information the Company already provides, which UCA's witness has confirmed that parties can create without additional reporting requirements.

**b. Public Service**

21. Public Service seeks clarification of the Commission's directive that the Company include a narrative in its next ECA/PCCA recovery proceeding that explains, for the top 10 instances by dollar amount, why CTs were running while renewables were curtailed or Cabin Creek was pumping. The Company suggests that the top 10 instances should be determined by the volume of potentially reduceable CT generation or curtailment in MWh, rather than a simple dollar

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<sup>6</sup> Hr. Tr. 1-9-2025 at pp. 259:14-21 and 260:17-25.

amount. The Company states that the potentially reduceable CT generation volumes are likely of most interest to the Commission and intervenors and are an appropriate proxy for the instances determined by UCA for disallowance in this Proceeding.

22. The Company explains that it would flag all hours with CT generation greater than 10 MW and non-zero curtailments or pump load at Cabin Creek less than -10 MW, then sort the data to determine the dates with the greatest CT generation and simultaneous curtailment or pumping of Cabin Creek. This would be sorted according to the lower of either the total curtailment or pumping and the total CT generation. The Company states that this methodology is analogous to the manner in which UCA conducted its analysis for Answer Testimony in this Proceeding. Furthermore, Public Service contends that ranking by volume could be converted to a dollar amount by multiplying the MWh by a dollar value, if intervenors wished to make that calculation.<sup>7</sup>

23. The Company states that determining the top 10 instances in this manner can be accomplished by the Company prior to the 2024 ECA/PCCA prudence filing but that determining impacts and ranking every hour of coincident events on actual costs would require an extensive study that could not be completed in time for the next ECA/PCCA prudence review.

24. Public Service proposes that Paragraph 17 and Ordering Paragraph 2 of Decision No. C25-0374 be modified as follows:

Public Service shall file as part of its direct case in the next ECA/PCCA recovery proceeding a narrative explaining why combustion turbines were running while either pumping Cabin Creek or curtailing renewables. The narrative should encompass the top ten instances by ~~dollar amount~~ volume of potentially reduceable CT generation or curtailment/pumping in MWh and provide analysis of the operational conditions that led to the relevant dispatch decisions.

We grant Public Service on this point, with modification. We agree that the proposed methodology will allow appropriate data to be available to the Commission and intervenors in the 2024

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<sup>7</sup> Public Service notes that it would dispute that these amounts should be used for disallowances.



ECA/PCCA prudence review and will assist the Commission in determining any possible customer impacts of the instances of simultaneously running CTs and curtailing renewables or pumping Cabin Creek. However, we are concerned that this methodology might not capture the top dollar value instances if there are unexpected spikes in natural gas prices, such as in February 2021 or in the fall 2022 to winter of 2023. Therefore, we modify Paragraph 17 of Decision No. C25-0374 as follows:

Public Service shall file as part of its direct case in the next ECA/PCCA recovery proceeding, a narrative explaining why combustion turbines were running while either pumping Cabin Creek or curtailing renewables. The narrative should encompass the top ten instances by ~~dollar amount~~ volume of potentially reduceable CT generation or curtailment/pumping in MWh. In the event there has been a significant spike in natural gas prices during the reporting year, as was seen in February 2021 and fall 2022 to winter 2023, the Company shall ensure that the top ten instances of simultaneous dispatch of CTs and curtailment of renewables or pumping Cabin Creek include those instances with highest dollar values. ~~and The Company shall~~ provide an analysis of the operational conditions that led to the relevant dispatch decisions.

Ordering Paragraph 2 of Decision No. C25-0374 is modified as follows:

Public Service Company of Colorado ("Public Service") is directed to file as part of its direct case in the next Electric Commodity Adjustment ("ECA") and Purchased Capacity Cost Adjustment ("PCCA") recovery proceeding a narrative explaining why combustion turbines were running while either pumping Cabin Creek or curtailing renewables. The narrative should encompass the top ten instances by ~~dollar amount~~ by volume of reduceable CT generation or curtailment/pumping in MWh. In the event there has been a significant spike in natural gas prices during the reporting year, as was seen in February 2021 and fall 2022 to winter 2023, the Company shall ensure that the top ten instances of simultaneous dispatch of CTs and curtailment of renewables or pumping Cabin Creek include those instances with highest dollar values. ~~and The Company shall~~ provide analysis of the operational conditions that led to the relevant dispatch decisions.

## **II. ORDER**

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

1. The Application for Rehearing, Reargument, or Reconsideration filed on June 4, 2025, by the Office of the Utility Consumer Advocate is denied, consistent with the discussion above.

2. The Application for Rehearing, Reargument, or Reconsideration filed on June 4, 2025, by Public Service Company of Colorado (“Public Service”) is granted, with modification.

3. Paragraph 17 and Ordering Paragraph 2 of Decision No. C25-0374 are modified, consistent with the discussion above.

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

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

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETINGS  
June 18, 2025.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners