Decision No. R25-0080

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24AL-0307E

IN THE MATTER OF ADVICE LETTER NO. 1954 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO IMPLEMENT THE CLEAN ENERGY PLAN REVENUE ("CEPR") RATE ADJUSTMENT MECHANISM TO INCREASE CHARGES FOR ELECTRIC SERVICE, TO BECOME EFFECTIVE JANUARY 1, 2025.

RECOMMENDED DECISION APPROVING SETTLEMENT AGREEMENT WITH MODIFICATIONS, PERMANENTLY SUSPENDING TARIFF SHEETS, AND REQUIRING A COMPLIANCE ADVICE LETTER AND AMENDED TARIFF SHEETS

Issued Date: February 5, 2025

I. STATEMENT

1. This Proceeding relates to the July 11, 2024, filing by Public Service Company of Colorado ("Public Service" or "Company") of Advice Letter No. 1954-Electric ("AL 1954"), with tariff sheets, to implement a rate adjustment mechanism called the Clean Energy Plan Revenue rider ("CEPR").

A. Procedural Background

1. Proceeding No. 21A-0141E

2. Pursuant to Senate Bill 19-236, a qualified retail utility is required to file a Clean Energy Plan ("CEP") to reduce carbon dioxide emissions from electricity sales by 80 percent from 2005 levels by 2030.[1] To implement approved additional CEP activities, the Commission shall establish a maximum electric retail rate impact of 1.5 percent of the total electric bill annually for

[1] § 40-2-125.5(2)(a), C.R.S.

each customer, and this CEPR can be used for CEP capital investments and operating and related expenses, exclusive of fuel and transmission costs; costs associated with the baseline electric resource plan ("ERP") portfolio; the incremental costs of eligible energy resources which are recovered pursuant to the Renewable Energy Standard Adjustment ("RESA"); and the incremental costs of certain clean energy resources and directly related interconnection facilities further described under the statute.[2] The utility is to file an annual report with the Commission addressing these issues. Furthermore, in the first rate case following the final implementation of the CEP after 2030, the Commission shall address the treatment of any positive or negative balance in the CEPR account.[3]

3. Public Service filed its CEP and ERP on March 31, 2021, in Proceeding No. 21A-0141E. While Public Service proposed a methodology for determining the costs of additional CEP activities as part of its filing, by Decision No. C22-0459, issued August 3, 2022, the Commission directed it to make certain modifications as part of its analysis of solicitation results in Phase II. Specifically, the Commission declined to approve Public Service's proposal for accounting for costs as between the CEPR and the RESA—characterizing it as "vague and confusing"—and instead directing Public Service to file an application presenting its methodology for defining and assigning costs related to additional CEP activities no later than one year in advance of beginning to recover attributable costs from the CEPR.[4]

4. Accordingly, Public Service proposed an alternative methodology for defining and assigning costs related to additional CEP activities as part of its 120-Day Report, filed on September 18, 2023. By Decision No. C24-0052, issued January 23, 2024, the Commission stated

[2] § 40-2-125.5(5)(a)(I)-(III), C.R.S.
[3] § 40-2-125.5(5)(a)(V), C.R.S.
[4] Proceeding No. 21A-0141E, Decision No. C22-0459, issued August 3, 2022, at ¶¶ 147-149.

that it "generally agree[d] with, and approve[d]," the categorization of actions and investments which Public Service proposed as additional CEP activities for recovery through the CEPR, finding it to be clearer.[5] However, the Commission reiterated its direction to file an application regarding allocation of costs as between the CEPR and the RESA, given that modifications to the approved portfolio could create uncertainty as to the stacking of resources and therefore which resources should be treated as additional CEP activities.[6] This is the direction that resulted in the present Proceeding.

2. AL 1954

5. Public Service filed AL 1954 on July 11, 2024, along with direct testimony, a Rate Trend Report, and a Motion for Alternative Form of Notice ("AFON Motion").

6. On July 17, 2024, the Commission issued Decision No. C24-0515-I, granting the Company's AFON Motion.

7. On July 23, 2024, Public Service filed a Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information ("Motion for Extraordinary Protection"), seeking to protect competitively sensitive information related to Proceeding No. 21A-0141E and the development of costs proposed to be recovered from the CEPR.

8. Trial Staff of the Commission ("Staff") filed a letter of protest and request for a hearing on July 29, 2024. Staff identified numerous potential concerns it sought to examine further, including but not limited to the proposed methodology for determining which activities should be eligible for recovery through the CEPR and whether the calculation of the proposed 1.25% rate impact was reasonable.

[5] Proceeding No. 21A-0141E, Decision No. C24-0052, issued January 23, 2024, at ¶ 257.
[6] *Id*. at ¶¶ 257-258.

9. On August 5, 2024, by Decision No. C24-0564, the effective date of the tariff was suspended, an intervention period was set, and the matter was referred to an Administrative Law Judge ("ALJ").

10. On September 5, 2024, Staff filed its Notice of Intervention as of Right, Entry of Appearance and Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

11. On September 6, 2024, the Colorado Energy Consumers ("CEC") filed their Motion to Permissively Intervene.

12. On September 6, 2024, the Colorado Office of the Utility Consumer Advocate ("UCA") filed its Notice of Intervention as a Matter of Right, Request for Hearing, and Entry of Appearances.

13. On September 6, 2024, Climax Molybdenum Company ("Climax") filed their Motion to Intervene Permissively.

14. On August 23, 2024, by Decision No. R24-0615-I, a prehearing conference was scheduled for September 20, 2024.

15. On September 13, 2024, Public Service filed its Motion to Approve Procedural Schedule.

16. On September 26, 2024, by Decision No. R24-0690-I, a procedural schedule was adopted.

17. On October 30, 2024, Public Service Company filed its Notice of Settlement in Principle, Motion to Modify Procedural Schedule and Request for Waiver of Response Time.

18. On November 6, 2024, Public Service, Staff and UCA ("Settling Parties") filed their Non-Unanimous Comprehensive Settlement Agreement ("Settlement Agreement") and testimony in support of the Settlement Agreement.

19. On November 20, 2024, CEC and Climax filed their Response to Joint Motion to Approve Settlement ("Response").

20. On January 6, 2024, by Decision No. R25-0006-I, the evidentiary hearing was vacated.

II. DISCUSSION

A. Proposed Advice Letter

21. Public Service describes the proposed methodology for identifying additional CEP activities in its direct testimony. Drawing from the methodology it previewed in the 120-Day Report, Public Service proposes to establish the CEPR at a level of 1.25 percent as of January 1, 2025, and to base the calculation of specific costs on several steps, including:

> a. The Company will compare the Reference Case Plan from the ERP to an Alternative Portfolio, which is the approved CEP.
>
> b. The resource additions in both plans will be characterized as "energy" or "capacity" resources. Energy and capacity resources will be separately stacked based on their accredited capacity, and sorted from lowest to highest cost of energy and lowest to highest levelized cost of capacity.
>
> c. The levelized costs will be derived from Appendix P of the Company's 120-Day Report, but the levelized cost of capacity will also be adjusted for accredited capacity.
>
> d. If a resource is in excess of the Reference Case Plan, it will be treated as an additional CEP activity. If a resource is partially in excess, but partially included within, the Reference Case Plan, it will not be treated as an additional CEP activity.[7]

22. Under this approach, Public Service identifies additional CEP activities as including the cost of changed operations for converting the Pawnee Unit from coal-fired to gas-fired, and the costs of Bid 0149, based on the Energy Resource Stack.[8] There are no additional

[7] Hr. Ex. 101, Rurup Direct Testimony, pp. 12:3-13:30.
[8] Hr. Ex. 101, Rurup Direct Testimony, pp. 10:14-16, 12:30-32.

CEP activities calculated from the Capacity Resource Stack. The early retirements of Craig Unit 2, Hayden Unit 1, and Hayden Unit 2 are included in the Reference Case Plan and are not considered additional CEP activities.

23. As to other cost recovery mechanisms and issues, Public Service states that costs of retiring coal assets are addressed in Decision No. C23-0362, which was issued in Proceeding No. 22A-0515E. Additionally, pursuant to approvals in Proceeding No. 21A-0141E, any positive balance in the CEPR account after 2030 would be applied to coal decommissioning costs. It also states that it is declining to bring forward a recommendation to fund any CEP costs from the RESA at this time, but it may do so in the future. Similarly, it states that it may propose a separate cost recovery mechanism for Just Transition Plans filed pursuant to § 40-2-125.5(4)(a)(VII), C.R.S., Moreover, Public Service represents that the costs attributed to the CEPR could still change, depending on whether additional CEP activities are identified in the pending Just Transition Solicitation ("JTS").[9]

24. While Public Service initially proposed a 1.5 percent CEPR in Proceeding No. 21A-0141E, it seeks a 1.25 percent CEPR through AL 1954. It represents that at this level, including a "fair share" charge for net-metered solar customers, it will collect $48-58 million in annual CEPR revenues. It thus projects a positive balance of approximately $61 million in 2030, recommending that some headroom be allowed given the uncertainty of future JTS costs.[10] Public Service proposes to report on the CEPR through its ERP Annual Report, which it files each March 31.

[9] Now filed as Proceeding No. 24A-0442E.
[10] Hr. Ex. 101, Rurup Direct Testimony, pp. 36:20-39:9.

25. Public Service states that it filed its request as an advice letter, rather than an application, to promote more expeditious resolution.[11] It also seeks approval to defer notice, legal, and related costs associated with this Proceeding for consideration in a future rate case, in a non-interest-bearing regulatory asset.

B. Settlement Agreement

a. Updated CEPR Tariff

26. The Settling Parties agree that the Company will revise the CEPR Tariff to remove the reference to the Extraordinary Gas Cost Recovery Rider ("EGCRR"), as the EGCRR is no longer effective, and add language regarding the Fair Share calculation.

b. Calculation of Fair Share CEPR Charge

27. The Settling Parties agree that any customers that receive optional service under Schedule PV and elect Net Metering under Schedule NM, and install their generation facilities on or after December 26, 2014, shall be subject to an additional Fair Share CEPR Monthly bill amount.

28. The Company will calculate the Fair Share CEPR charge in accordance with Rule 3664(g)(I) for customers that have a production meter.

29. For any customers that do not have a production meter, the Company will calculate the Fair Share CEPR charge in accordance with Rule 3664(g)(II).

30. For retail renewable generation that is not production-metered and that is sized between 500 Watts and 5 kW, the Company will use a 500 kWh monthly volume proxy that shall be multiplied by the applicable electric service rate schedule Base Energy Charge and all applicable Base Rate Adjustments and Non-Base Rate Adjustments. The resulting product will be

[11] Hr. Ex. 101, Rurup Direct Testimony, p. 8:7-11.

multiplied by one and one-quarter percent (1.25 percent) to determine the customer's additional Fair Share CEPR Monthly bill amount.

31. For retail renewable generation that is not production-metered and that is sized 5 kW to 10 kW, the Company will use a 1,000 kWh monthly volume proxy that shall be multiplied by the applicable electric service rate schedule Base Energy Charge and all applicable Base Rate Adjustments and Non-Base Rate Adjustments. The resulting product will be multiplied by one and one-quarter percent (1.25 percent) to determine the customer's additional Fair Share CEPR Monthly bill amount.

c. CEPR Level, Effective Date, and Adjustments

32. The Settling Parties agree that the Updated CEPR Tariff (Exhibit A to the Agreement), inclusive of the updates and adjustments regarding the Fair Share CEPR Charge, shall go into effect at a level of one and one-quarter percent (1.25 percent).

33. The CEPR effective date will be January 1, 2025.

34. According to the Settlement Agreement, to the extent that the CEP Delivery Plan in Proceeding No. 21A-0141E impacts any additional CEP projects assessed to be recovered through the CEPR under the methodology set forth in direct testimony, the Company may adjust the CEPR level if needed, and the Company retains future rights to propose adjustments to the CEPR level as set forth in Section I of the Settlement Agreement, including for the inclusion of eligible JTS resources in Proceeding No. 24A-0442E. To the extent that a CEPR resource fails at any point in the future, the Company will inform the Commission and seek appropriate approvals to replace such resource consistent with the process established in Proceeding No. 21A-0141E. The Company will address any implication for and adjustment to the CEPR at that time.

35. The Settling Parties believe that the 1.25 percent CEPR strikes a balance between recovering enough to cover already approved CEP activities and creating headroom for future activities, such as activities that may arise from the JTS.

36. The Settling Parties believe that a rate of 1.25 percent will provide rate stability as the Company looks to manage rates going to 2030, given that it is highly likely that certain JTS activities will be proposed to be treated as CEP activities funded through the CEPR. If a rate of 1.0 percent is initially implemented, the Company will likely need to come back and adjust the CEPR rate to an amount greater than 1.25 percent to account for additional expenses related to the JTS.

37. The Settling Parties argue that any over-collected balance can be used to reduce the balances of coal assets approved for accelerated retirement, consistent with the approved Updated Non-Unanimous Partial Settlement Agreement in Proceeding No. 21A-0141E.

38. The Settling Parties also agree that any issues related to CEPR projects may be raised within the scope of the Electric Commodity Adjustment ("ECA") and Purchased Capacity Cost Adjustment ("PCCA") annual prudence reviews, which are filed annually on August 1. This includes issues related to CEPR project performance or proposals to modify the percentage level of the CEPR, although Public Service retains the right to file standalone advice letter proceedings to adjust CEPR collection levels.

C. Position of CEC and Climax

39. CEC and Climax ("Opposing Parties") oppose Section IV, paragraph 8 of the Settlement Agreement that sets the initial rate for the CEPR at 1.25 percent effective January 1, 2025. The Opposing Parties do not join and take no position on the other terms of the Settlement Agreement.

40. The Opposing Parties argue that the CEPR is premature, since the expenditures it is intended to fund are not planned to occur until at least one year after the effective date of the tariff and the vast majority occur two years thereafter. Moreover, the Opposing Parties argue that if the CEPR is set at 1.25 percent, it will create a "slush fund" to be deployed at an unknown date for unknown purposes. The Opposing Parties believe that this would be unjust and unreasonable, and they further argue that the projected overcollection is likely significantly understated based on current forecasts. Finally, the Opposing Parties do not believe that the 1.25 percent CEPR will provide rate stability as argued by the Settling Parties. Any rate stability is only after a rate shock of the additional 1.25 percent rate increase. To avoid over-collection, Opposing Parties thus propose that if the Commission does approve a CEPR to become effective on January 1, 2025, the rate be set at no higher than 1.0 percent to protect customers from overpayment.

III. CONCLUSION

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

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

43. The undersigned ALJ has reviewed the testimony and exhibits filed by the parties. The ALJ has duly considered the positions of all parties in this matter.

44. The ALJ has also considered the recitations of the Settling Parties made in the Settlement Agreement and Motion to Approve Settlement Agreement.

45. The ALJ agrees with the Settling Parties that establishing the CEPR at a level of 1.25 percent will provide stability to rates. The Settling Parties' proposed rate provides funding for already approved projects and any other activity from the JTS, and the headroom the 1.25 percent CEPR rate provides will avoid additional, excessive Commission proceedings and costs to ratepayers.

46. The 1.25 percent is also below the 1.50 percent level allowed by statute. The 1.25 percent rate strikes a balance to allow for fewer shifts in rates, yet not create excessive overcollection.

47. In addition, the Opposing Parties do not argue that there will not be additional activities that would require an increase in the CEPR rate. Nor do they argue that any over-collection could not be used to reduce the balances of coal assets approved for accelerated retirement. Rather than creating a "slush fund," any overcollection can and will be used for activities already approved by the Commission. Again, this would bring stability to rates and lessen proceedings before the Commission. The fears of rate shock are also unfounded. Any rate shock experienced by a 1.25 percent CEPR rate would be slightly more than the rate shock at a 1.00 percent CEPR rate. The position of the Opposing Parties only kicks the can down the road to what would be inevitable rate hikes. Taken together, the weight of the evidence supports a CEPR rate at 1.25 percent.

48. At the same time, we recognize the view set forth by Opposing Parties that regulatory scrutiny is necessary, particularly given the potential that the implementation of Public Service's CEP could lead to evolving resources which may change the costs attributable to the CEPR given the methodology set forth in this Proceeding, as refined from Proceeding No. 21A-0141E. While the Commission has not established rules specific to the ECA/PCCA

annual prudence review process, the history of proceedings establishing the scope of those reviews have increasingly emphasized the need for granular, unit-specific information.[12] Given the number of potential rate mechanisms that could be invoked to recover portions of CEP-related costs, the ALJ anticipates that future prudence reviews would benefit from significant efforts from the Company to present clear, granular information demonstrating the attribution of costs.

49. The ALJ agrees with the substance of proposed tariff, as modified by the terms of the Settlement Agreement. However, portions of the wording in the proposed tariff are redundant and unclear. For example, the proposed tariff unnecessarily contains the following phrase in two separate places: "for Customers that receive optional service under Schedule PV and elect Net Metering under Schedule NM who install their generation facilities on or after December 26, 2014..." To fix this and other issues with the proposed tariff, the ALJ replaces the second paragraph of the proposed tariff with the following:

> In addition to the CEPR charges above, Customers receiving optional service under Schedule PV who elect Net Metering under Schedule NM and who install their generation facilities on or after December 26, 2014, shall be charged a Fair Share CEPR Monthly bill amount. Consistent with Rule 3664(g)(I) for retail renewable generation that is production metered, the Fair Share CEPR charge shall be based on the total energy in Kilowatt-Hours produced by the Customer's generation system. The Fair Share CEPR charge shall be calculated by multiplying the Monthly Kilowatt-Hour production times the total effective Monthly applicable energy rate on a per Kilowatt-Hour basis including the applicable electric service rate schedule Base Energy Charge and all applicable Base Rate Adjustments and Non-Base Rate Adjustments. The resulting product will be multiplied by one and one-quarter percent (1.25%) to determine the Customer's additional Fair Share CEPR Monthly bill amount. Consistent with Rule 3664(g)(II), the Fair Share CEPR charge for retail renewable generation that is not production metered shall be calculated as follows. For systems sized between 500 watts and five kW, the Company will use a 500 kWh monthly volume proxy that shall be multiplied by the applicable electric service rate schedule Base Energy Charge and all applicable Base Rate Adjustments and Non-Base Rate Adjustments. The resulting product

[12] *See*, *e.g.*, Proceeding Nos. 21A-0370E and 22A-0345E.

> will be multiplied by one and one-quarter percent (1.25%) to determine the customer's additional Fair Share CEPR Monthly bill amount. For systems sized five kW to 10 kW, the Company will use a 1,000 kWh monthly volume proxy that shall be multiplied by the applicable electric service rate schedule Base Energy Charge and all applicable Base Rate Adjustments and Non-Base Rate Adjustments. The resulting product will be multiplied by one and one-quarter percent (1.25%) to determine the customer's additional Fair Share CEPR Monthly bill amount.

50. Again, these changes to the proposed tariff are intended to enhance clarity and do not impact the tariff's effect. The ALJ views these changes as consistent with the intent of the Settlement Agreement, and specifically paragraphs 3-7 setting forth the calculation of the Fair Share CEPR Charge. Based on the entire record, the ALJ finds that approval of the proposed tariff, as modified by the Settlement Agreement and this Recommended Decision, in in the public interest.

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

IV. ORDER

It is Ordered That:

1. The Joint Motion to Approve Settlement Agreement filed on November 6, 2024, is granted, in part, with modifications, and the Settlement Agreement is approved.

2. Consistent with the above discussion, the Settlement Agreement filed November 6, 2024 as Attachment A to the Joint Motion ("Settlement Agreement") is approved, with modifications. The Settlement Agreement and proposed Tariff Sheets are included with this Decision as Appendix A.

3. The Tariff Sheets associated with Amended Advice Letter No. 1954, filed on July 11, 2024, are permanently suspended.

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

5. Proceeding No. 24AL-0307E is closed.

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

7. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

8. Responses to exceptions shall be due within seven calendar days from the filing of exceptions.

9. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended 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.

10. If a party seeks to amend, modify, annul, or reverse a basic finding 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.

11. If exceptions to this Recommended 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)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director