

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16A-0276E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY
OF COLORADO FOR APPROVAL OF THE TREATMENT OF COST SAVINGS
RESULTING FROM THE JOINT DISPATCH AGREEMENT AND OF CERTAIN
REPORTING REQUIREMENTS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING APPLICATION IN PART,
ADDRESSING TREATMENT OF THE JOINT
DISPATCH AGREEMENT, ORDERING
ACCOUNTING TREATMENT, AND
ORDERING PUBLIC SERVICE TO FILE REPORTS**

Mailed Date: November 30, 2016

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I. STATEMENT

1. On April 18, 2016, Public Service Company of Colorado (Public Service, PSCo, or Company), filed a Verified Application for approval of the proposed treatment of cost savings resulting from the Joint Dispatch Service Agreement (JDA) approved by the Federal Energy Regulatory Commission (FERC) on February 18, 2016 and for approval of the proposed filing requirements (Application). The filing commenced this Proceeding.

2. On April 19, 2016, the Commission issued its Notice of Application Filed (Notice) in this Proceeding. That Notice established an intervention period.

3. On May 19, 2016, Staff of the Commission (Staff) intervened as of right. In that filing and in accordance with Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a),¹ Staff identified the Trial Advocacy Staff and the Advisory Staff.

4. On May 19, 2016, the Colorado Energy Consumers (CEC) filed its Motion to Intervene (CEC Motion). On June 9, 2016, Decision No. R16-0503-I granted the CEC Motion and permitted CEC to intervene in this Proceeding.

5. CEC and Staff, collectively, are the Intervenors; each individually is an Intervenor. Applicant and Intervenors, collectively, are the Parties; each individually is a Party. Each Party is represented by legal counsel in this Proceeding.

6. On June 1, 2016, by Minute Order, the Commission deemed the Application complete as of that date. Decision No. R16-0503-I extended the time for Commission decision in this Proceeding to December 28, 2016. Decision No. R16-1025-I² extended the time for Commission decision in this Proceeding to January 31, 2017.

¹ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

² This Interim Decision was issued on November 4, 2016.

7. On June 1, 2016, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition.

8. On July 6, 2016, by Decision No. R16-0629-I, the ALJ scheduled a final prehearing conference for September 21, 2016 and the evidentiary hearing for September 23, 2016 and established a procedural schedule in this Proceeding.

9. Public Service filed direct testimony and attachments and rebuttal testimony and attachments. Staff filed answer testimony and attachments. CEC did not file testimony.

10. On September 19, 2016, by Decision No. R16-0861-I, the ALJ vacated the scheduled final prehearing conference.

11. The ALJ held the evidentiary hearing as scheduled.³ The Parties were present, were represented, and participated. At the conclusion of the hearing, the ALJ closed the evidentiary record.

12. On September 30, 2016, each Party filed a Statement of Position (SOP). No response to an SOP was permitted.

13. In accordance with § 40-6-109, C.R.S., the undersigned ALJ now transmits to the Commission the record in this Proceeding and a written recommended decision.

II. FINDINGS OF FACT

14. The record establishes, and the ALJ finds, that the Commission has subject matter jurisdiction in this Proceeding.

³ A transcript of the hearing has been filed in this Proceeding. In this Decision, citation to the transcript is: Tr. at page:line. For example, citation to the transcript at page 11, lines 12 through 20 is: Tr. at 11:12-20.

15. The record establishes, and the ALJ finds, that the Commission has *in personam* jurisdiction over the Company in this Proceeding.

16. Except as noted, the facts are not in dispute.

A. Parties.

17. Public Service is a public utility in the State of Colorado and is subject to the jurisdiction of, and is rate regulated by, the Commission. As relevant here, PSCo is engaged in the generation, purchase, transmission, distribution, and sale of electricity within its Colorado service area.

18. Intervenor “CEC is an unincorporated association of corporations duly authorized and in good standing to transact business within Colorado” (CEC Motion at ¶ 1). Its

members are comprised of industrial and commercial customers of PSCo and, for purposes of this proceeding, CEC’s membership includes: Air Liquide, Anadarko Petroleum Corporation, Ball Corp., the Denver Metro Building Owners and Managers Association, Lockheed Martin Corporation, MillerCoors, Suncor Energy (U.S.A.) Inc., and Western Metals Recycling.

CEC Motion at 1 & n.1.

19. Intervenor Staff is Trial Advocacy Staff of the Commission as identified in the Rule 4 CCR 723-1-1007(a) notice filed in this Proceeding.

B. Witnesses and Exhibits.

20. At the evidentiary hearing, the ALJ heard the testimony of three witnesses.

21. PSCo witness John T. Welch is employed by Xcel Energy Services Inc. as Director, Power Operations. In that capacity, he is

responsible for directing the economic dispatch of [the resources of Xcel Energy Operating Companies,] including [those of] Public Service. [His] duties include short-term economic resource portfolio optimization, or “setting up” the system on a next-day basis as well as real-time generation dispatch functions.

Additionally, [his] group engages in economy transactions in real-time, purchasing and selling energy on behalf of Public Service.

Direct Testimony and Attachments of John T. Welch (Hearing Exhibit No. 1) at 7:3-9.⁴ Mr. Welch manages PSCo's system dispatchers (*i.e.*, personnel who plan the order of PSCo's generation unit dispatch and who dispatch generation units) and PSCo's energy traders (*i.e.*, personnel who, on behalf of PSCo, purchase and sell energy in the wholesale electricity market). His direct testimony is Hearing Exhibit No. 1, and his rebuttal testimony is Hearing Exhibit No. 2. His oral testimony is found in Tr. at 6:16-81:14.

22. PSCo witness Alexander G. Trowbridge is employed by Public Service as Principal Pricing Consultant in the Pricing and Planning Department. In that capacity, he

develop[s] new rate design proposals and modifications to existing rates to ensure effective pricing structures, increased options for customers, and compliance with regulatory requirements. [He is] also responsible for overseeing the development of revenue forecasts and reports of historic revenues for official Public Service budgets and rate cases.

Direct Testimony and Attachments of Alexander G. Trowbridge (Hearing Exhibit No. 3) at 7:3-7. Mr. Trowbridge's direct testimony is Hearing Exhibit No. 3. His oral testimony is found in Tr. at 82:11-126:16.

23. Staff witness Sharon L. Podein is an engineer employed by the Commission. Ms. Podein's answer testimony is Hearing Exhibit No. 4. Her oral testimony is found in Tr. at 127:10-134:19.

24. Including prefiled testimonies, eight documents were marked for identification, were offered, and were admitted into evidence as Hearing Exhibits.

25. There is no confidential information in the evidentiary record.

⁴ In this Decision, citation to the prefiled testimony is: Hearing Exhibit No. XX at page:line.

C. Joint Dispatch Agreement (JDA).

26. In an organized electricity market, as pertinent here, entities with available resources submit offers into that market, which results in available offers that have different availability, different prices, and different delivery requirements. Entities respond to the offers that the responding entities find reasonable and suitable for their needs. If an offer is accepted, the offering entity provides resources to the responding entity in accordance with the terms of the accepted offer. In this way (and based on the accepted offers), resources are optimized in order to serve the load within the organized market's geographic area. An organized market is operated by an independent party (that is, a party that is neither an offering entity nor a responding entity).

27. Public Service does not operate within an organized electricity market.

28. Public Service, Black Hills Colorado Electric Utility Company, LP (Black Hills or BHCE), and Platte River Power Authority (Platte River or PRPA), among others, operate (that is, have electric loads and resources) in the Public Service Balancing Authority Area (PSCo BAA).⁵

29. The concept of joint dispatch is: one entity dispatches (in accordance with specific guidelines or criteria) its own generating resources and the generating resources of one or more other entities in order to serve the load of all the participating entities by improving the operational efficiency within a particular area through real-time dispatch optimization of the generation resources of the participating entities.

30. Public Service and Black Hills had a long-term power purchase agreement that was set to expire (and did expire) at year-end 2011. In view of the looming contract expiration, in 2011, Public Service began discussing with Black Hills the concept of a joint dispatch

⁵ The BAA is described in the Application at 2 n.1.

arrangement. The discussions continued into 2012 and were expanded to include, among others, Platte River. Although a joint dispatch arrangement involving all the discussion participants was not reached, Public Service, Black Hills, and Platte River (the JDA Parties) pursued the joint dispatch concept, entered into the JDA, and agreed on general terms regarding transmission rights and usage.

31. Generally speaking, under the JDA, Public Service acts to achieve the most efficient use of the JDA Parties' generation and power purchase resources in order to meet the Parties' combined energy needs, taking into account Available Transfer Capability along the transmission paths between the JDA Parties.

1. Provisions of the JDA.

32. Public Service and Black Hills filed a JDA with the FERC on November 1, 2014 (November 2014 JDA). This Commission intervened in that FERC proceeding. FERC did not approve the November 2014 JDA. Public Service sought rehearing, and this Commission filed comments in support.

33. On October 30, 2015, Public Service filed a revised JDA based on FERC's concerns with the November 2014 JDA. FERC approved the revised JDA on February 18, 2016. The FERC-approved JDA is the JDA in this Proceeding.⁶

34. The JDA does not involve the exchange of capacity rights among or between the JDA Parties. In addition, the JDA does not involve the transfer of Renewable Energy Credits.

35. A fundamental requirement of the JDA is: each JDA Party is responsible "to have capacity on-line sufficient in quantity and operating characteristics, such as ramp rate and

⁶ The JDA is found at Hearing Exhibit No. 1 at Attachment JTW-1.

economic minimums and maximums, to reliably serve that Party's Capacity Requirements." Hearing Exhibit No. 1 at Attachment JTW-1 at 6. The JDA defines Capacity Requirements as: the "Native Load, plus Operating Reserves, plus the net of any long-term and short-term system, and unit power, bilateral purchases and sales." Hearing Exhibit No. 1 at Attachment JTW-1 at 2.⁷ ⁸ When this requirement is satisfied, excess capacity may be designated as a Party Resource available for use under the JDA.

36. Under the JDA, Party Resources are the "Party-owned generators and Power Purchases contracted by a Party, in each case, designated for use under [the JDA] by such Party." Hearing Exhibit No. 1 at Attachment JTW-1 at 5.⁹ A Party Resource that, in a given Operating Hour,¹⁰ is available for dispatch control by Public Service under the JDA is a Dispatchable Unit. Hearing Exhibit No. 1 at Attachment JTW-1 at 3 (definition), 7 (§ 3.2 of the JDA).

37. The JDA Parties have made different commitments with respect to resource designation.

38. In § 3.2 of the JDA, *Public Service* has designated "all its Party Resources [that are] online during any given Operating Hour and that are capable of dispatch control as Dispatchable Units." Hearing Exhibit No. 1 at Attachment JTW-1 at 7.

⁷ Native Load is the "electric load of the Party's Native Load Customers." Hearing Exhibit No. 1 at Attachment JTW-1 at 4. Native Load Customers are the "wholesale and retail power customers of the Party, within the [PSCo BAA], on whose behalf the Party, by statute, franchise, regulatory requirement, or contract, has undertaken an obligation to provide electric power resources to meet the electric needs of such customers." Hearing Exhibit No. 1 at Attachment JTW-1 at 5.

⁸ Operating Reserves are the "hourly amount of reserves -- including spinning reserves, non-spinning, and other reserves for maintenance of system reliability -- as may be required by the Rocky Mountain Reserve Sharing Group, or the PSCo Balancing Authority Service Agreement." Hearing Exhibit No. 1 at Attachment JTW-1 at 5.

⁹ Power Purchases are "[p]urchases of energy at wholesale, including under power purchase agreements and tolling agreements, other than Deficit Energy Transactions or Surplus Energy Transactions." Hearing Exhibit No. 1 at Attachment JTW-1 at 6. Deficit Energy Transactions and Surplus Energy Transactions also are terms defined in the JDA.

¹⁰ An Operating Hour is the "clock hour, in Mountain Prevailing Time, that is inclusive of real-time." Hearing Exhibit No. 1 at Attachment JTW-1 at 5.

39. In contrast, *Black Hills* and *Platte River* are JDA Participants,¹¹ and each has “the ability, on an hourly basis, to select (or deselect) its resources that will be subject to dispatch by PSCo” (Hearing Exhibit No. 1 at Attachment JTW-1 at 2). This means that their generators and power purchases are available only as and when they are designated as a Dispatchable Unit for the next Operating Hour and that a JDA Participant’s Dispatchable Units can change hour to hour. To allow Public Service to know the Dispatchable Units available during a given Operating Hour, § 3.2 of the JDA requires “[e]ach Participant [to] inform PSCo of [the] Party Resources that it chooses to designate as Dispatchable Units *prior to* the Operating Hour. No Participant shall be obligated to designate any Party Resources as a Dispatchable Unit for any particular Operating Hour.” Hearing Exhibit No. 3 at Attachment JTW-1 at 7 (emphasis supplied).

40. In accordance with the terms of the JDA and applying the principles of economic dispatch, Public Service will dispatch the Dispatchable Units (taking into account available transmission between the JDA Parties) in the most economic order so as to manage the difference between the JDA Parties’ scheduled and actual load. This will provide a JDA Party the opportunity to purchase the energy to meet its Native Load obligation within the PSCo BAA at a cost-based rate that is lower than the cost the Party would have incurred to serve that load using its own resources.

41. The Energy Management System (EMS) is the tool used by Public Service to dispatch its system using principles of economic dispatch.¹² Consequently, the EMS contains

¹¹ The JDA allows for numerous Participants. Hearing Exhibit No. 1 at Attachment JTW-1 at 5. At present, however, *Black Hills* and *Platte River* are the only Participants. Thus, unless the context indicates otherwise, reference in this Decision to the JDA Participants or to the Participants is to *Black Hills* and *Platte River*.

¹² The Company also will use its Integrated Energy Management system.

PSCo's load and real-time resource data, its unit cost data, its unit availability data, and its Dispatchable Unit operating information. The EMS is the system that Public Service will use to carry out its JDA unit dispatch responsibilities.

42. The EMS establishes for each Dispatchable Unit its set-point, which is the MW quantity the unit is to generate in order to accomplish the economic dispatch. To accomplish the purposes of, and to perform its dispatch obligations under, the JDA, EMS must have: (a) load and real-time resource data from the JDA Participants;¹³ (b) unit cost data for the JDA Participants' Party Resources;¹⁴ and (c) Dispatchable Unit operating information.¹⁵ To populate the EMS with the data necessary to determine the set-points for economic dispatch of the Dispatchable Units, JDA Participants input the required information directly into the EMS by means of the Joint Dispatch Portal (Portal). The Portal has a separate point of access for each Participant, allows only an authorized employee of a Participant to have access to that Participant's point of access and to input information, and prevents a Participant from accessing both the unit cost data in EMS and another Participant's point of access. Public Service marketing function employees have access to the load and real-time resource data that JDA Participants provide via the Portal. However, "unless all Parties agree otherwise, the Unit Cost Information for resources of any Party shall not be available at any time to an employee of any other Party that is designated as a Marketing Function Employee." Hearing Exhibit No. 1 at

¹³ Section 3.4 of the JDA specifies the data to be provided. Hearing Exhibit No. 3 at Attachment JTW-1 at 7-8.

¹⁴ The unit cost data from the JDA Parties are "used to calculate the economic set-point of Dispatchable Resources" (Hearing Exhibit No. 1 at Attachment JTW-1 at 7). The unit cost information to be provided by the JDA Parties is set out in § 3.5 of the JDA. Hearing Exhibit No. 1 at Attachment JTW-1 at 8.

¹⁵ Section 3.6 of the JDA specifies the data to be provided. Hearing Exhibit No. 1 at Attachment JTW-1 at 8-9.

Attachment JTW-1 at 7. The Portal is “the system of record for all Unit Cost Information of the Parties.” Hearing Exhibit No. 1 at Attachment JTW-1 at 8.

43. Public Service uses the Portal to provide the JDA-required reports and settlements to the Parties.

44. Prior to the Joint Dispatch Operation Start Date (JDOSD), each Party must input into EMS all required information about each of the Party’s Party Resources. After the JDOSD, each Party must update the information as necessary to assure that the information is accurate. Hearing Exhibit No. 1 at Attachment JTW-1 at 8-9. The JDA contains a provision that allows a Party to designate additional Party Resources after the JDOSD, provided the stated criteria are met. Hearing Exhibit No. 1 at Attachment JTW-1 at 8.

45. Article 4 of the JDA governs operations. Section 4.1 of that Article: (a) requires each Party, to the extent possible, to meet its energy requirements using its own resources; (b) provides that, if the Parties’ Energy Requirements have not been met, the “remainder of the combined Parties’ Energy Requirements will be served by PSCo’s real-time dispatch of the Dispatchable Units in accordance with the terms of” the JDA (Hearing Exhibit No. 1 at Attachment JTW-1 at 9-10); and (c) provides that, “if a Party serves its entire Energy Requirements with [resources not designated for JDA use], [PSCo may dispatch] any Dispatchable Units of that Party ... to serve Energy Requirements of the remaining Parties in accordance with the terms of” the JDA (Hearing Exhibit No. 1 at Attachment JTW-1 at 10).

46. Section 4.2 of Article 4 governs dispatch. That section states:

The PSCo EMS will derive economic set-points for all Dispatchable Units based on Unit Cost Information entered into the Portal. PSCo will, in accordance with Good Utility Practice, utilize the economic set-points from the PSCo EMS to dispatch the Parties’ Dispatchable Units in real-time in a manner that will maintain reliability while minimizing overall production costs and taking into

account transmission availability and the Dispatchable Unit operating information. *The Parties will deploy their units and respond to PSCo's dispatch instructions, which shall be delivered in the form of an electronic set-point or verbal command. Dispatch instructions will be issued from the PSCo EMS or PSCo dispatch desk.*

Hearing Exhibit No. 1 at Attachment JTW-1 at 10 (emphasis supplied). In other words, if a Dispatchable Unit has Automatic Generation Control (AGC), the dispatch instructions (*i.e.*, the set-point) are sent from the EMS directly to the Dispatchable Unit without human intervention. If a Dispatchable Unit does not have AGC, a PSCo dispatcher contacts personnel in the dispatch center responsible for the Dispatchable Unit and directs dispatch of the unit. Generally speaking, Dispatchable Units have AGC.

47. Public Service has responsibility for submitting reports and settlement documents.

48. "All energy transactions under [the JDA are] calculated on an *ex post* basis and [are] settled monthly." Hearing Exhibit No. 1 at Attachment JTW-1 at 14 (*italics in original*).

49. "Public Service will bear the cost to set up the systems that will price and settle the energy exchanged under the [JDA], which Public Service anticipates to be approximately \$450,000." Hearing Exhibit No. 1 at 26:1-3.

50. The JDA includes a Management Fee (\$ 0.50/MWh for all energy sold or purchased) to be paid by the Participants to Public Service. The Management Fee is intended to compensate PSCo for the capital cost of the infrastructure to support the JDA and the costs of administering the JDA.

51. The JDA also include provisions with respect to transmission.¹⁶ This transmission service is non-firm, is provided only on an as-available basis, and is for the sole purpose

¹⁶ This is the Joint Dispatch Transmission Service approved by the FERC in the Order that is Hearing Exhibit No. 5.

of facilitating the JDA energy transfers. This transmission service is the lowest priority transmission service, uses Available Transfer Capability that would otherwise go unused, and is provided at a zero rate.

52. Under the JDA, the JDA Parties are buyers and sellers of energy among and between each other only.

53. In essence, the JDA allows a JDA Party to generate energy sales when that Party is able to increase output of its Dispatchable Units beyond its own needs to provide cost-effective energy to serve another JDA Party's load.

54. The estimated combined net benefit of the JDA for the JDA Parties is projected to be \$ 4.5 million annually. Of that \$ 4.5 million annual benefit, Public Service estimates that approximately \$ 1.4 million will be conveyed to Public Service and its customers.¹⁷ This estimated annual benefit is before the jurisdictional split between wholesale and retail. Based on the current jurisdictional split, approximately 93 percent of the annual benefit will flow to PSCo retail customers.

2. 2015 Letter Agreement.

55. During the course of the FERC proceedings regarding the JDA, Public Service and the Commission entered into a letter agreement dated August 21, 2015 (2015 Letter Agreement). In the 2015 Letter Agreement, in addition to certain reporting requirements, the Company committed to come before the Commission within 60 days after the FERC order approving the JDA "for a determination on the treatment of cost savings resulting from the JDA

¹⁷ This estimated benefit is for 2016 and is illustrative.

and a detailed accounting of how the expected savings will be realized by [Public Service's] customers." Hearing Exhibit No. 4 at Attachment SLP-02 at 2.

56. In accordance with the 2015 Letter Agreement, in its Application, Public Service seeks Commission approval of:

its proposal to pass through costs savings attributable to short-term purchases under the JDA through the ECA on an annual basis consistent with current practice. The Company also requests approval that if the Company is in the position to engage in short term sales as described above, margins would be shared ... with the retail customers and Public Service would retain 10 percent.

Application at ¶ 13.

3. JDA Implementation.

57. The JDA was executed on October 26, 2011. That is the effective date of the JDA.

58. The Joint Dispatch Operation Start Date (JDOSD) was to be January 1, 2016. This date was delayed because of technical difficulties with integrating the Portal into the EMS and bringing the Portal online. As of the date of the evidentiary hearing, Public Service had not completed testing of the Portal and other Information Technology (IT) changes necessary under the JDA and, thus, had not started JDA transactions. PSCo expected to begin JDA transactions by November 2016.

59. As of the date of the evidentiary hearing, because no JDA transactions had been conducted, Public Service had collected no Management Fees and, thus, had not booked those revenues to FERC Account 456, Other Electric Revenues.

D. Trading Business Rules.

60. In its Application, Public Service requests a Commission determination that the energy sales under the JDA are Generation Book (Gen Book) transactions within the scope of the

Public Service's Policy for Resource Management and Cost Assignment for Short-Term Electric Energy and Renewable Energy Credit Transactions (Trading Business Rules).¹⁸ Nonetheless, because it is contractually bound by the JDA, Public Service will dispatch resources and fulfill its other obligations under the JDA irrespective of whether the Commission agrees with Public Service that the energy sales under the JDA are Gen Book transactions within the scope of the Trading Business Rules. Tr. at 14:7-12, 37:5-38:2.

61. Public Service further seeks Commission approval of sharing the margins from the energy sales under the JDA in accordance with the 90 percent to customers and 10 percent to shareholders sharing of Gen Book sales margins. Again, because it is contractually bound by the JDA, Public Service will dispatch resources and fulfill its other obligations under the JDA irrespective of whether the Commission agrees with Public Service that sharing of the energy sales margins under the JDA is appropriate. Tr. at 14:7-12, 37:5-38:2.

62. The fundamental issue in this Proceeding, therefore, is whether JDA transactions are short-term electric energy transactions within the meaning the Trading Business Rules.

63. The Trading Business Rules

are an approved set of policy guidelines for resource management and cost assignment when [PSCo is] entering into procurement and sales transactions for short-term energy. [They] also outline the calculation [method] for assigning costs to short-term energy sales.

Hearing Exhibit No. 3 at 11:20-23. The current Trading Business Rules address the treatment of Generation Book (Gen Book) and Proprietary Book (Prop Book) transactions. The Gen Book is the book that is pertinent to this Proceeding.

¹⁸ The current Trading Business Rules are found at Hearing Exhibit No. 3 at Attachment AGT-1. Unless the context indicates otherwise, reference in this Decision to the Trading Business Rules is to the current rules.

64. Gen Book sales are sales in the wholesale market of short-term electric energy: (a) generated from generation units owned by Public Service; (b) available to Public Service under long-term contracts; or (c) acquired in a short-term market purchase. Gen Book “short term sales [are] subordinate to the Company’s firm native load obligations. [Gen Book] short term sales ... (to the extent feasible) [must] be interrupted if the energy is needed for the reliability of the Company’s system.” Decision No. C03-0670¹⁹ at Attachment A at 72 (footnote omitted). Gen Book sales also can be interrupted as necessary to serve PSCo’s native load. The amount of Gen Book sales that PSCo can make is restrained by “limited transmission capacity in the neighborhood of the Company’s electric system and the limited spread between the Company’s production costs and the production costs of other market participants.” *Id.* at Attachment A at 66.

65. The Trading Business Rules provide that, when the Company executes a short-term electric purchase or sale, the transaction is “assigned to either the Generation Book, Hybrid REC Book or Proprietary Book on the basis of the buy or sell decision made at the Effective Date of the contract.” Hearing Exhibit No. 3 at Attachment AGT-1 at 11. Because JDA transactions are short-term (*i.e.*, intra-hour) and Public Service believes it will engage in JDA transactions only at times when it is economic for its customers, Public Service plans to assign the JDA transactions to the Gen Book.

66. As relevant here, the Trading Business Rules have their origin in the Stipulation and Agreement approved in Proceeding No. 99A-557E, *In the Matter of the Application of Public Service Company of Colorado for an Order Approving Its Incentive Cost Adjustment*

¹⁹ That Decision was issued on June 26, 2003 in Proceeding No. 02S-315EG, *Re: the Investigation and Suspension of Tariff Sheets Filed by Public Service Company of Colorado Advice Letter No. 1373-Electric, Advice Letter No. 593-Gas, and Advice Letter No. 80-Steam.*

*Filing for the Period July 1998 through June 1999 (2000 Agreement),*²⁰ which contains the initial statement of the electric commodity trading principles now found in the Trading Business Rules.

67. In Proceeding No. 99A-557E, Public Service sought approval of its Incentive Cost Adjustment (ICA) filing for the period July 1998 through June 1999. This included continuation of Commission-approved 50/50 sharing of net gains from economy sales through the ICA. Economy sales are “short term sales *subject to curtailment* prior to Public Service’s existing firm sales and power pool operating requirements.” 2000 Agreement (Hearing Exhibit No. 6) at 2 (emphasis supplied).

68. In support of its application, Public Service asserted that

energy trading is the appropriate and necessary response to Commission policy, reflected in the ICA, to place PSCo at risk for increased fuel and energy costs. PSCo believes that it has developed a sophisticated energy trading operation that wisely hedges fuel and energy price risks that exist in the wholesale energy market within which PSCo must operate. PSCo further believes that prior Commission ECA/ICA orders are broad enough to allow the results of energy trading to be reflected in the ICA. The espoused purpose of the ICA 50/50 energy cost sharing is to align the interests of shareholders and customers. This alignment provides appropriate incentives to engage in transactions that benefit both shareholders and customers.

2000 Agreement (Hearing Exhibit No. 6) at 2-3 (emphasis supplied).

69. In that case, Staff: (a) acknowledged that the Commission had approved a 50/50 sharing of net gains from economy sales through the ICA; (b) recommended disallowance of certain non-economy sales and associated transmission expenses; (c) asserted that Public Service must obtain Commission approval before engaging in energy trading activity outside economy sales and before including those expenses for recovery in the ICA; and (d) recommended that trading activity-related losses not be shared with retail ratepayers.

²⁰ Decision No. R00-0830 was issued on August 1, 2000 in Proceeding No. 99A-557E, and approved the 2000 Agreement. The 2000 Agreement is Hearing Exhibit No. 6.

70. Public Service and Staff proposed, and the Commission agreed, that the terms of the 2000 Agreement would govern the treatment of energy trading in the ICA. As relevant here, the 2000 Agreement defines short-term (*i.e.*, not greater than 12 months in term length) transactions as including, but not limited to, these products:

- economy and short-term firm sales (*energy sales that can be physically interrupted* (e.g. economy, 1-hour firm, financially firm))
- *Rocky Mountain Reserve Group (“RMRG”) sales* (spinning reserve service, operating reserve service, and energy associated with activated reserves)
- ancillary services (spinning reserve service, supplemental operating (non-spinning) reserve service, reactive supply and voltage control from generation sources service, regulation and frequency response service, energy imbalance service, and replacement reserve service)
- options, including call options (the right but not the obligation to receive and buy energy at a specific strike price) and put options (the right but not the obligation to provide and sell energy at a specific strike price)

2000 Agreement (Hearing Exhibit No. 6) at 4 (emphasis supplied). As pertinent here, the short-term transactions include “system hedges (sales made against the natural excess energy position of the PSCo system and purchases made against the natural deficit energy position of the PSCo system, where the PSCo system means PSCo generation, purchased power resources and native load obligation)[.]” 2000 Agreement (Hearing Exhibit No. 6) at 4-5.

71. The 2000 Agreement provides: (a) the listed products are *representative* of the products that, at the time of the 2000 Agreement, PSCo bought and sold “*in the wholesale market*” (Hearing Exhibit No. 6 at 5 (emphasis supplied)); (b) nothing in the 2000 Agreement precludes PSCo from trading other products or services that are not within the listed products; and (c) “Staff reserves its right to challenge the reflection of the margins from such transactions [*i.e.*, trades involving products and services not listed] in the calculation of aggregated net gains

or losses from short term transactions” (*id.*). This provision is unchanged and has been in effect since 2000.

72. To preserve Staff’s right to challenge the inclusion of trades involving products and services beyond those listed, the 2000 Agreement contains this procedure: (a) if it elects to trade a product or service not listed in the 2000 Agreement, Public Service must provide Staff with “a written description ... of the new product or service” (Hearing Exhibit No. 6 at 5); (b) upon receipt of the written description, Staff has 15 days to provide PSCo with a written advisement concerning “whether Staff supports, or objects to, inclusion of the described new product or service in the aggregation of short term transactions” (*id.*); (c) “[i]f Staff supports the inclusion, then the new product or service will be deemed to be added to the stipulated list in” the 2000 Agreement (*id.*); and (d) should

Staff object[] to the inclusion of the new product or service in the aggregation, then Public Service shall bear the burden of going forward and the burden of proof in a subsequent ICA proceeding that such new product or service is appropriately included in the aggregation and Staff reserves the right to contest such inclusion in the aggregation.

Hearing Exhibit No. 6 at 5-6. This process is unchanged and has been in effect since 2000.

73. Concerning sharing of margins, the 2000 Agreement states:

The aggregated net margins shall be split between the federal and state jurisdictions. Any Colorado jurisdictional positive aggregated margin shall be shared on a 50/50 basis with retail customers through the ICA [Absent a Commission decision to the contrary, the ICA shall not reflect any Colorado jurisdictional negative aggregated margin.]

2000 Agreement (Hearing Exhibit No. 6) at 6.

74. As relevant here, the 2000 Agreement requires PSCo, “[w]hensoever it engages in energy trading activities, ... to abide by its Risk Management Policies and Procedures Manual.”

Hearing Exhibit No. 6 at 7.

75. The Commission approved the current Trading Business Rules in Proceeding No. 13A-0689E, *In the Matter of the Application of Public Service Company of Colorado for Approval of Changes to Trading Business Rules Governing Short-Term Energy Transactions*. Public Service filed that application to address the treatment of Renewable Energy Credits (RECs) in, and to make other modifications to the previous version of, the Trading Business Rules.

76. On October 23, 2013, the parties in that case filed a Stipulation and Settlement Agreement (2013 Agreement). Appended to the 2013 Agreement were revised Trading Business Rules (*i.e.*, the current Trading Business Rules). By Decision No. R13-1544,²¹ ALJ Paul C. Gomez accepted the 2013 Agreement and the Trading Business Rules without modification.

77. The Trading Business Rules contain the

policy for resource management and cost assignment for short-term electric energy transactions [and] shall provide guidelines for ... [Public Service] to follow when procuring and selling short-term electric energy under [the 2000 Agreement, prior proceedings, and prior Commission Decisions]. Additionally, [the listed proceedings and Decisions] address aspects of [REC] transactions. This policy also provides guidelines for cost assignment in connection with the purchase and sale of short-term electric energy. This policy supersedes the previous one and shall take effect when approved by the Commission and shall remain in effect unless modified by the Commission.

Hearing Exhibit No. 3 at Attachment AGT-1 at 1.

78. The Trading Business Rules state:

Short-term wholesale sales include electric transactions, as defined in the [2000 Agreement], and include transactions in the Generation Book and Propriety Book. ... Generation Book sales are limited to a duration not to exceed two years. ... Concerning the two ... year limitation[] on durations, the start time for measuring duration is the first day of the physical transaction. The last physical delivery from a Generation Book Sale shall take place no later than 36 months after the Effective Date of the contract. ... All Generation Book and Proprietary Book sales transactions must follow the policies and procedures established in

²¹ That Decision was issued on December 16, 2013.

[PSCo's] Credit and Performance Risk Management Policy and Commodity Risk Management and Compliance Policy.

Hearing Exhibit No. 3 at Attachment AGT-1 at 4.

79. The Trading Business Rules contain definitions of terms. “Gen Sale means a wholesale sale that is expected to be supplied from the System Resources not needed to serve Native Load.” Hearing Exhibit No. 3 at Attachment AGT-1 at 1. “Native Load means jurisdictional retail and long-term wholesale sale load obligation.” *Id.* at 2. “System Resources means power supply resources owned or long-term power purchases controlled by the Company that are used to serve Native Load.” *Id.* These are the same (or substantially the same as) definitions as those in the previous versions of the Trading Business Rules.

80. The Trading Business Rules contain a provision entitled Book Assignment. That provision states:

All electric, REC, displacement and gas hedging transactions are assigned to either the Generation Book, Hybrid REC Book or Proprietary Book on the basis of the buy or sell decision made at the Effective Date of the contract. Once an assignment is made, it cannot be reassigned absent a formal transfer between Books in a manner consistent with these business rules concerning transfers between Books. If the initial assignment of a transaction was in error, the transaction may be reassigned with management approval and such correction shall be documented. It is expected that such assignment errors will be rare.

Hearing Exhibit No. 3 at Attachment AGT-1 at 11 (emphasis supplied). The Effective Date is the “date that the contract governing the transaction was signed” (*id.* at 1).

81. With respect to *short-term energy transactions of less than one month duration*, as relevant here, the Trading Business Rules continue, without substantive modification, the Trading Business Rules in effect since 2003. In particular, the Trading Business Rules provide:

a. PSCo is permitted to make Gen Book purchases only “when the *market price* is below the projected decremental cost of production” and is permitted to make Gen Book

sales only “when the *market price* is above the projected incremental cost of the system” (Hearing Exhibit No. 3 at Attachment AGT-1 at 5-6 (emphasis supplied));

b. When “*PSCo traders believe that the intra-day hourly market* may be more favorable to the Generation Book than pre-scheduled purchases, PSCo may choose to meet its Native Load requirements in the *hourly market*” (*id.* at 6 (emphasis supplied));

c. A unit commitment and economic dispatch model will guide Gen Book sales and purchases by providing buy and sell signals;

d. “*PSCo may modify these [buy and sell] signals when the trading analyst believes that the model output is not accurately reflecting system conditions*” (Hearing Exhibit No. 3 at Attachment AGT-1 at 6 (emphasis supplied));

e. “All modifications to these price signals shall be documented, including the rationale for such modifications and documentation supporting such rationale” (*id.*);

f. “*Traders shall be guided by the Director, Energy Trading and by the Electric Hedging Committee as to the level of risk to be assumed by PSCo in entering into purchase, sale and displacement transactions*” (*id.* (emphasis supplied)); and

g. “*Real-time Generation Book activities are guided by the immediate needs of Native Load customers, unit availability, and hourly market prices. PSCo shall retain the decremental and incremental hourly price signals available to the traders*” (*id.* (emphasis supplied)).

82. As did previous versions of the Trading Business Rules, the current Trading Business Rules contain a provision that lists the documentation that Public Service must retain. In that documentation is production cost and unit commit/economic dispatch model information, which includes (among other things) “[d]ocumentation describing *subjective alterations to the*

model output, based upon analyst experience and judgment and associated rationale[.]” Hearing Exhibit No. 3 at Attachment AGT-1 at 12 (emphasis supplied)).

83. The Trading Business Rules contain this provision, also a continuation from previous Trading Business Rules:

The Risk Management department shall monitor compliance with the Company’s Commodity Risk Management Policy. All violations will be reported to management. Documentation of violations will be maintained for a period of time consistent with section V of this policy.

Hearing Exhibit No. 3 at Attachment AGT-1 at 16.

84. Upon application and with a sufficient showing, the Commission will exempt from the Trading Business Rules purchases made by Public Service pursuant to a specific agreement. This was done in Proceeding No. 05A-161E.²²

E. Additional Facts.

85. Additional facts are found throughout the remainder of this Decision.

III. BURDEN OF PROOF AND RELATED PRINCIPLES

86. As the party that seeks Commission approval or authorization, Public Service bears the burden of proof with respect to the relief sought; and the burden of proof is preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500. “The evidence underlying the agency’s decision must be adequate to support a reasonable conclusion.” *City of Boulder v. Colorado Public Utilities Commission*,

²² That Proceeding is *Application of Public Service Company of Colorado for Approval of HVDC Converter Cost Recovery Mechanism*. In that Proceeding, Decision No. R05-1362 was issued on November 16, 2005. The Commission remanded the case for additional findings. On January 10, 2006, Decision No. R06-0010 (recommended decision on remand) at ¶ 4 incorporated by reference Decision No. R05-1362. Thus, although Decision No. R06-0010 is the recommended decision in Proceeding No. 05A-161E, the pertinent Trading Business Rules discussion is found in Decision No. R05-1362. Decision No. C06-0193, issued on March 1, 2006, is the decision on exceptions to Decision No. R06-0010, including exceptions to the incorporated Decision No. R05-1362.

996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Public Utilities Commission*, 949 P.2d 577, 585 (Colo. 1997)). The preponderance standard requires the finder of fact to determine whether the existence of a *contested fact* is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

87. An intervenor that proposes a condition to be placed on the relief granted by the Commission has the same burden of proof (*i.e.*, preponderance of the evidence) with respect to its advocated condition.

88. In addition, the JDA, the regulatory treatment of the payments made to Public Service under the JDA, and the other requested approvals sought in the Application are matters of public interest. The Commission has an independent duty to determine matters that are within the public interest. *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984). As a result, the Commission is not bound by the Parties' proposals. The Commission may do what the Commission deems necessary to assure that the final result is just, is reasonable, and is in the public interest *provided* the record supports the result *and provided* the reasons for the choices made (*e.g.*, policy decisions) are stated.

89. Finally, unless the record establishes good cause not to do so (*e.g.*, circumstances not previously addressed are present), the ALJ should apply the principles enunciated in Commission Decisions that address the issues in this Proceeding. By way of example and not limitation, this includes Decisions that address the Trading Business Rules and that address approval of incentive payments to PSCo.

90. In reaching her decision in this matter, the ALJ is mindful of these principles and of the Commission's duty.

IV. DISCUSSION

91. In reaching this Decision, the ALJ considered the entire evidentiary record, including evidence not specifically addressed in this Decision.

92. In reaching this Decision, the ALJ considered all arguments presented by the Parties in this Proceeding. If an argument is not specifically addressed in this Decision, the ALJ finds that argument to be unpersuasive.

A. Parties' Positions.

1. Public Service.

93. The Company requests that the Commission: (a) find that JDA transactions are Gen Book transactions that are subject to the Trading Business Rules; (b) authorize sharing (through the Electric Commodity Adjustment (ECA)) of margins on Gen Book sales such that of the retail jurisdictional customers receive 90 percent and Public Service retains 10 percent as an incentive; (c) approve the Company's proposed accounting treatment for the JDA-related capital costs (including amortization), the JDA-related Operating and Maintenance (O&M) expenses, and the Management Fee that the Company will receive under the JDA; and (d) order PSCO to make JDA-related reports to the Commission.

a. Treatment of JDA Transactions.

94. Public Service requests a decision that finds the JDA transactions to be Gen Book transactions and to be subject to the Trading Business Rules. Public Service acknowledges that, while it believes the JDA transactions "qualify as Gen Book transactions under the existing Trading Business Rules, implicit in its request for approval of sharing of margins is recognition

of the need for a Commission determination of whether JDA transactions are Gen Book transactions.”²³ Public Service SOP at 3.

95. In support of its position that the JDA transactions are Gen Book transactions and are subject to the Trading Business Rules, Public Service states: (a) based on the definition of Gen Book sales, System Resources, and Native Load, JDA transactions are short-term energy Gen Book wholesale transactions within the meaning of the Trading Business Rules; (b) short-term wholesale sales include electric transactions, as defined in the 2000 Agreement, and transactions in the Gen Book and Prop Book (Trading Business Rules (Hearing Exhibit No. 3 at Attachment AGT-1) at 4); (c) the JDA transactions are short-term energy wholesale transactions as specifically defined in the 2000 Agreement, which provides that “net short-term transactions aggregated shall include, but not be limited to the following products: economy and short-term firm sales (energy sales that can be physically interrupted (e.g. economy, 1-hour firm, financially firm)” (Hearing Exhibit No. 6 at 4), RMRG sales, and system hedges;²⁴ and (d) the JDA transactions are Gen Book transactions because they are short-term economy energy sales and purchases with BHCE and PRPA that PSCo will make, guided by unit availability, market prices, and the immediate needs of Native Load customers as required in the Trading Business Rules.

96. In addition, the Company states that JDA transactions are indistinguishable from Gen Book transactions because: (a) both consist of intra-hour sales; (b) both use Power System Traders, although the Company acknowledges that it “will not need to search for and identify

²³ For this reason, Public Service disagrees with Staff’s position that Public Service considers the issue of whether JDA transactions are Gen Book transactions to be settled.

²⁴ For this reason, Public Service disagrees with Staff’s position that the JDA is a new product under the Trading Business Rules and, thus, requires an application before JDA transactions can be treated as Gen Book transactions under those Rules.

counterparties for the JDA transactions” (Public Service SOP at 9); (c) in the past, “the Company has sold short-term energy to a counterparty at a system delivery point without reserving transmission or using preexisting reserved transmission capacity” (*id.*), which is similar to what will occur under the JDA; (d) Public Service must do risk assessment for JDA transactions and for Gen Book transactions (Hearing Exhibit No. 2 at 15:8-16:17); and (e) neither BHCE nor PRPA is a wholesale requirements customer of PSCo, and the JDA is not a wholesale requirements contract. The Company also points out that the 2000 Agreement, which lists the products that are within the purview of the Trading Business Rules, “includes as short-term energy products the purchases and sales under the Rocky Mountain Reserve Group [RMRG], which has pre-existing contractual and transmission arrangements in place just as with the JDA transactions” (Public Service SOP at 9). *See also* 2000 Agreement (Hearing Exhibit No. 6) at 4 (RMRG sales as products).

97. The Company states that the Trading Business Rules require immediate assignment of an electric transaction “to either the Generation Book, Hybrid REC Book or Proprietary Book on the basis of the buy or sell decision made at the Effective Date of the contract” (Hearing Exhibit No. 3 at Attachment AGT-1 at 11). Because the Company’s JDA short-term energy sales and purchases will occur only when they are economic for customers (which makes them Gen Book transactions), the Company believes it appropriate to assign JDA transactions to the Gen Book.

98. For these reasons, Public Service requests that the Commission find the JDA transactions to be Gen Book transactions.

b. Sharing Proposal.

99. Public Service requests an order authorizing it to receive a 10 percent share of the JDA transaction margins.

100. In support of this request, Public Service asserts: (a) because the JDA transactions are Gen Book transactions, the Commission should apply to JDA transactions the sharing of Gen Book margins of 90 percent to the customers and 10 percent to the Company that the Commission approved in Proceeding No. 11AL-947E; and (b) authorizing Public Service to receive a 10 percent share will encourage it to work diligently to implement the JDA and to engage in JDA transactions, which benefits its ratepayers.

101. The Company acknowledges that the JDA does not include a provision addressing margin sharing. The Company states that the absence of such a provision is not relevant because, first,

the JDA is an agreement among the JDA Parties. How each party accounts for margins or what approvals that a JDA Party may seek from its state regulator are not relevant. Second, the JDA was subject to FERC jurisdiction. Again, how a JDA Party will account for margins with its customers is not within the FERC's jurisdiction and was not relevant to its approval of the JDA.

Public Service SOP at 10.

102. For these reasons, Public Service requests that the Commission allow the JDA transactions to receive the same treatment as other Gen Book transactions, including sharing the trading margins 90 percent to ratepayers and 10 percent to the Company.²⁵

²⁵ For these reasons, Public Service disagrees with CEC's and Staff's position that Commission-approved margin sharing for Gen Book transactions do not apply to the JDA transactions.

c. Accounting Treatment.

103. Public Service proposes accounting treatment for: (a) the capital costs related to the software developed to implement and to support the JDA; (b) the JDA-related O&M expenses; and (c) the Management Fee paid to Public Service under the JDA.

104. With respect to the *capital costs related to software developed to implement and to support the JDA*, Public Service proposes: (a) to record the costs in FERC Account 107, Construction Work in Progress - Electric (CWIP - Electric); (b) once these assets are in service, to transfer these assets to FERC Account 303, Miscellaneous Intangible Plant; and (c) to amortize these assets over three years and to record the amortization in FERC Account 405, Amortization of Other Electric Plant.

105. With respect to the *Business Systems O&M expenses*, Public Service proposes to track these expenses directly and to record them to FERC Account 556, System Control and Load Dispatching.

106. With respect to the *Commercial Operations JDA-related activities*, Public Service proposes to track these expenses directly and to record them to FERC Account 556, System Control and Load Dispatching.

107. With respect to *JDA-related energy purchases*, Public Service proposed to record them in FERC Account 555, Purchases Power.

108. The accounting treatment for JDA short-term sales is found in Hearing Exhibit No. 3 at 11:6-12.

109. With respect to the *Management Fee paid to Public Service under the JDA*, Public Service proposes to record these funds in FERC Account 456, Other Electric Revenues, until the filing of the Company's next electric rate case. Public Service asserts that this is the

correct procedure and accounting, and does not result in an improper or unusual benefit to the Company, because,

between rate cases, a utility's revenues *and* expenses will fluctuate. For example, expenses can increase and a utility is obligated to pay those increased expenses. In a subsequent rate case, the utility cannot request recovery of those increased expenses because of test year principles. This is the nature of ratemaking and not a nefarious action. Furthermore, the Company has not yet started engaging in JDA transactions and expects to go "live" in about a month. As such, no management fee has been collected year-to-date and booked to other revenues.

Public Service SOP at 11 (*italics in original*) (footnotes omitted).²⁶

110. Public Service requests Commission approval of the accounting treatment.

d. JDA-Related Reporting by Public Service.

111. Public Service requests that the Commission order Public Service to make the JDA-related reports that the Company has agreed to make.

112. In the 2015 Letter Agreement with Staff, Public Service agreed to the following reporting requirements:

If the JDA is implemented, either in the form initially proposed or as modified, [Public Service] agrees to supply the [Commission] with an informational report on a [semi-annual] basis. The informational report shall estimate to the best extent practicable the JDA's effect on Colorado retail ratepayers and shall include all supporting data and documentation. [Public Service] shall continue to provide such informational reports until [Public Service and the Commission] agree such reports are no longer necessary; and

* * *

If the JDA is implemented, [Public Service] estimates that the net carbon impact resulting from the change in dispatch will be *de minimis*. On a semi-annual basis, [Public Service] will report the estimated net change in carbon emissions across all JDA parties comparing operations under the JDA to aggregated model results for the parties if they had operated independently. [Public Service] will report this information in its [semi-annual] informational report, *supra*, so that the

²⁶ For this reason, Public Service disagrees with Staff's position that Public Service's treatment of the Management Fee revenues is inappropriate.

Commission can determine how to proceed and/or account for any increase in emissions.

Hearing Exhibit No. 4 at Attachment SLP-02 at 2 (*italics in original*).

113. At the evidentiary hearing, Public Service agreed: (a) to file the reports required by the FERC Order approving the JDA (Hearing Exhibit No. 5), which provides:

... PSCo committed to file an annual report on the benefits of the Joint Dispatch Agreement for the first two years of operation, and we will accept PSCo's commitment. We will require PSCo to submit an informational report due within six months of the conclusion of each of the first two years of Joint Dispatch Agreement operations. In this report, PSCo should provide information on how the Joint Dispatch Agreement has functioned in each of its first two years, including: (1) a summary of the costs and savings each of the [JDA] participants has experienced, including comparisons of the cost for the last marginal unit of energy under the Joint Dispatch Agreement and the year preceding the implementation of the Joint Dispatch Agreement; (2) the pricing and volumes for Deficit, Surplus, and Joint Dispatch Energy; (3) whether any Joint Dispatch Agreement transactions have occurred on transmission paths where firm or non-firm transmission schedules or reservations have been curtailed; and (4) the actual costs associated with the management of the Joint Dispatch Agreement. We also note that PSCo, Black Hills, and Platte River have obligations to report their sales under the Joint Dispatch Agreement in their Electric Quarterly Reports, which will provide further transparency with regard to Joint Dispatch Agreement operations[]

(FERC Order (Hearing Exhibit No. 5) at ¶ 89 (footnotes omitted)); and (b) to file monthly status reports on the status of the JDA, including at least a description of the testing process, a description of how the testing proceeded, and the date on which the JDA goes live.

114. Public Service requests that the Commission order the JDA-related reporting.

2. Colorado Energy Consumers.

115. In its SOP, CEC: (a) questions whether JDA transactions are Gen Book transactions within the Trading Business Rules and requests a Commission interpretation of the Trading Business Rules to be applied going forward; (b) requests that the Commission's decision in this Proceeding make it clear that Public Service must seek Commission approval to treat a

new type of transaction as a Gen Book transaction under the Trading Business Rules; (c) supports Public Service's "proposal to pass through cost savings attributable to short-term purchases under the JDA through the ECA on an annual basis" (CEC SOP at 6); (d) opposes an incentive payment to Public Service and requests that, for each new type of transaction, the Commission require Public Service to obtain approval of sharing; (e) takes no position on the accounting treatment; and (f) requests that the Commission order Public Service to file the reports that Public Service agreed to file, including the monthly reports on delays in implementing the JDA until such time as the JDA is operational.

116. CEC did not sponsor a witness in this Proceeding.

a. Treatment of JDA Transactions.

117. CEC questions Public Service's assertion that JDA transactions are included in the 2000 Agreement and the Trading Business Rules and takes issue with Public Service's interpretation of the 2000 Agreement and the Trading Business Rules pursuant to which interpretation Public Service made the determination that JDA transactions are Gen Book transactions under the Trading Business Rules.

118. As support for its position, CEC states: (a) the 2000 Agreement and the Trading Business Rules predate the JDA and even the idea of the JDA; (b) the JDA contains no specific language that identifies JDA transactions as short-term transactions of economy energy, and "[t]he closest reference is ... in the definition of Joint Dispatch Energy, [which is] defined as 'Energy provided in accordance with Section 6.1.1.' Section 6.1.1 provides that Joint Dispatch Energy is 'Economic energy delivered by a Party within the PSCo Balancing Authority Area under this Agreement pursuant to normal joint economic dispatch operations'" (CEC SOP at 4 at note 8, *quoting* Hearing Exhibit No. 1 at Attachment JTW-1 at 4, 14); and (c) as shown in the

testimony of Staff witness Podein (Hearing Exhibit No. 4 at 9:11-12:11), Public Service has not presented sufficient evidence in this Proceeding to include JDA transactions as Gen Book transactions within the Trading Business Rules.

119. CEC also takes issue with Public Service's interpretation that, pursuant to the 2000 Agreement and the Trading Business Rules, Public Service makes the determination that transactions (here, JDA transactions) are Gen Book transactions under the Trading Business Rules. CEC states: the Commission has not granted to Public Service

unchecked permission to interpret, for all time, when a new type of transaction is potentially comparable to a short-term economic energy transaction. ... If the Company's interpretation is permitted to continue, then absent a pre-existing commitment to do so (as was the case in the [2015] Letter Agreement), PSCo has little incentive to seek Commission approval [to treat a new type of transaction as a Gen Book transaction under the Trading Business Rules] in the future, particularly when doing so puts at risk what PSCo believes to be its rightful share of ratepayer benefits.

CEC SOP at 5. In CEC's opinion, permitting Public Service to make this assessment and determination is contrary to the Trading Business Rules, which did not delegate to Public Service the authority to make that determination, and is bad public policy. In CEC's opinion, the Commission retains -- and did not delegate to Public Service -- the authority to make the determination of whether a new type of transaction is a Gen Book transaction under the Trading Business Rules.

120. For these reasons, CEC: (a) recommends that the Commission find that the JDA transactions are not Gen Book transactions; (b) urges the Commission to reject Public Service's interpretation that PSCo has authority to treat a new type of transaction as a Gen Book transaction under the Trading Business Rules and need not seek Commission approval before applying that treatment; and (c) requests that the Commission's decision in this Proceeding make

it clear that Public Service must seek Commission approval to treat a new type of transaction as a Gen Book transaction under the Trading Business Rules.

b. Sharing Proposal.

121. CEC opposes the proposed incentive payments to Public Service, urges the Commission to deny the requested incentive payment, and recommends that the Commission order Public Service to pass through 100 percent of the JDA transaction trading margins to PSCo's customers (using the ECA).

122. In support of its position, CEC states: (a) in the 2015 Letter Agreement, Public Service agreed, as relevant here, to ask the Commission "for a determination on the treatment of cost savings resulting from the JDA and a detailed accounting of how the expected savings will be realized by PSCo's customers" (Hearing Exhibit No. 4 at Attachment SLP-02 at 2); (b) aside from this statement, neither the 2015 Letter Agreement nor the JDA nor the FERC order mentions or addresses the issue of whether the savings anticipated to be realized from the JDA transactions ought to be shared between the Company's ratepayers and its shareholders; (c) in CEC's opinion, Public Service

neglected to mention to the Commission, to FERC, or to the parties to the JDA, [PSCo's] intention to keep, from ratepayers, ten percent of the margins earned in conjunction with the JDA because such claim to ratepayers' savings is entirely ancillary to the purpose of or interests served by the JDA. Indeed, the public interest of the JDA is served by a suite of reasons that are completely independent of the Company's sharing in ratepayers' margins.

CEC SOP at 3 (footnote omitted); (d) contrary to Public Service's argument and apparent belief, the Commission has not

bestow[ed] upon PSCo the unfettered ability to assert, at its own accord and to the enrichment of its shareholders, when a new type of transaction is entitled to a sharing of benefits between ratepayers and PSCo shareholders. If the Company's interpretation is permitted to continue,

then absent a pre-existing commitment to do so (as was the case in the [2015] Letter Agreement), PSCo has little incentive to seek Commission approval in the future, particularly when doing so puts at risk what PSCo believes to be its rightful share of ratepayer benefits. The Commission should reject PSCo's interpretation that it has Commission pre-approval to retain a share of benefits properly owed to ratepayers

CEC SOP at 5-6; (e) because both the 2000 Agreement and the Trading Business Rules predate the JDA, there is no Commission Decision that authorizes Public Service to retain for its shareholders a portion of the JDA transaction margins; and (f) the record establishes that

PSCo's sharing in ratepayers' savings does nothing to advance the public interest ... because the Company's contractual obligations to perform under the JDA are in no way affected by its ability to retain ratepayers' share of margins. Indeed, PSCo is obligated to perform under the JDA, and ... commits to doing so to the best of its ability, even without claiming any share of ratepayers' savings. What this means is that the opportunity to retain margins fails to provide any actual incentive for the Company; instead, the sharing of margins would serve as an unnecessary reward to PSCo for doing what the Company has already committed to do. The Company's attempt to claim a ten percent share of ratepayer savings is gratuitous. ...

CEC SOP at 3.

123. For these reasons, CEC recommends that the Commission: (a) reject Public Service's proposal to retain for its shareholders *any* portion of the JDA transaction margins; (b) order 100 percent of the trading margins to be passed through to PSCo's ratepayers (using the ECA); (c) reject Public Service's interpretation that the Commission has authorized sharing of Gen Book margins (90 percent to customers and 10 percent to shareholders) when there is a type of Gen Book transaction that the Commission has not addressed specifically; and (d) order Public Service to file an application to obtain Commission approval before Public Service retains for its shareholders any portion of Gen Book margins for a type of transaction that the Commission has not addressed specifically (in other words, absent a Commission decision addressing sharing, the presumption is: ratepayers receive 100 percent of the benefits).

c. Accounting Treatment.

124. CEC does not address the proposed accounting treatment.

d. JDA-Related Reporting by Public Service.

125. CEC supports a decision that orders Public Service to file the reports identified in the Application at ¶ 15, the additional reports discussed during the evidentiary hearing, and monthly reports on the status of implementation of the JDA.

126. With respect to the reporting requirements to which Public Service agreed during the evidentiary hearing, CEC states: PSCo witness Welch

agreed to report on the status of the Company's investigation of JDA delays, as well as when the JDA is live and operational. Absent this reporting requirement, and without knowing whether the JDA is working as planned, ratepayers will have no way to know whether or when the JDA infrastructure is "used and useful." CEC submits that the reporting on the JDA delays and when the JDA is operational should occur on a monthly basis, until such time as the JDA is up and running. CEC is supportive of the Company's expanded reporting commitments, and submits these requirements should be detailed in the Commission's Order in this Proceeding.

CEC SOP at 6.

127. For these reasons, CEC: (a) supports the reporting requirements stated in the Application at ¶ 15; (b) supports the reporting requirements to which the Company agreed during the evidentiary hearing; and (c) recommends that the Commission "require monthly reports of the status of the JDA delays until such time as the Company is able to report that the JDA is operational" (CEC SOP at 7).

3. Staff.

128. Staff: (a) seeks a determination that the JDA transactions are not Trading Business Rules transactions; (b) recommends that the JDA transactions be governed by the terms

and conditions of the JDA and be tracked, accounted for, and reported separately from (*i.e.*, not commingled with) Trading Business Rules transactions; (c) requests that the Commission require, going forward, Public Service to file an application for authorization to treat a new type of transaction as a Trading Business Rules transaction; (d) supports Public Service's proposal to pass the JDA cost savings through the ECA on an annual basis; (e) opposes an incentive payment to Public Service; (f) recommends that ratepayers receive 100 percent of the JDA transaction margins; (g) requests that the Commission require, going forward, Public Service to file an application for approval of sharing the margins from a new type of transaction under the Trading Business Rules; (h) supports the FERC accounting treatment proposed by Public Service; (i) recommends that the issues of prudence and cost recovery be addressed in a future rate proceeding; (j) recommends that the Commission order Public Service to defer the Public Service Dispatch Fee Revenue and the Amortized IT Investment and Cost of Capital in regulatory asset and liability accounts; and (k) supports requiring Public Service to file the reports that it has agreed to file.

a. Treatment of the Joint Dispatch Agreement Transactions.

129. Staff opposes the treatment of the JDA transactions sought by Public Service. Staff requests these Commission determinations: (a) the JDA transactions are not Gen Book transactions within the Trading Business Rules; (b) the JDA transactions are not to be co-mingled with Gen Book transactions; and (c) the JDA transactions are to be treated separately and in accordance with the JDA.

130. In support of this position, Staff asserts: (a) when deciding whether the JDA transactions are Trading Business Rules transactions, the Commission must consider the Trading Business Rules as a whole; (b) section II.C.2 of the Trading Business Rules contains the

purchase/sale criteria for electric transactions of less than one month duration, and that section provides:

The Generation Book may only purchase when the market price is below the projected decremental cost of production. The Generation Book may only make sales when the market price is above the projected incremental cost of the system.

Hearing Exhibit No. 3 at Attachment AGT-1 at 5-6 (emphasis supplied); (c) although market price is not a defined term in the Trading Business Rules, the term should be given its plain meaning (for example, the definition in “businessdictionary.com (unique price at which buyers and sellers agree to trade in an open market at a particular time)” (Staff SOP at 5 n.12); (d) the market price requirement in the Trading Business Rules stands in sharp contrast to the JDA pricing, which (i) will be determined after (not before) the energy is dispatched, (ii) will use cost-based (not market-based) pricing, and (iii) will be established without reference to an open market because the pricing is based on the Participants’ costs; and (e) given these crucial differences, the criteria (or limitations) in section II.C.2 of the Trading Business Rules cannot be met, and the JDA transactions are not (and cannot be treated as) Trading Business Rules transactions.

131. In addition, Staff asserts that, but for the 2015 Letter Agreement, Public Service would not have sought Commission approval to treat the JDA transactions as Gen Book transactions within the Trading Business Rules. In this regard, Staff states that Public Service

inappropriately presumes that the Commission relinquishe[d] control over future actions of the Company by its adoption of broad definitions that can be stretched by the Company to serve a profit motive. Such an interpretation could have far reaching consequences as Commission regulated utilities explore new business models that may provide economic efficiencies from participation in organized markets. In fact, it appears that but for the Company’s agreement with the Commission to file an application [*i.e.*, the 2015 Letter Agreement], the Company

would have determined on its own that the Trading Business Rules govern JDA Transactions and proceeded to act without any further approval.

Staff SOP at 6.

132. Finally, Staff recommends that the Commission “order that JDA Transactions are to be governed by the JDA itself, and [are to be] tracked, accounted for and reported separate and distinct from transactions that are governed by the Trading Business Rules” (Staff SOP at 7). In Staff’s opinion, this treatment is necessary: (a) to improve transparency; (b) to isolate the effects of the JDA transactions so they can be evaluated separately (for example, in a rate case); and (c) to ensure that JDA transactions “are not co-mingled with other transactions to the extent that they become indistinguishable or untraceable, as was the case with other intra-hour sales the Company has entered into in the past.” Staff SOP at 7.

133. For these reasons, Staff requests that the Commission: (a) deny Public Service’s request to treat JDA transactions as Gen Book transactions within the Trading Business Rules; and (b) “order that JDA Transactions are to be governed by the JDA itself, and [are to be] tracked, accounted for and reported separate and distinct from transactions that are governed by the Trading Business Rules” (Staff SOP at 7).

b. Sharing Proposal.

134. Staff urges the Commission to deny the requested sharing of the JDA transaction trading margins and requests that the Commission order Public Service to pass through 100 percent of the JDA transaction trading margins to PSCo customers (using the ECA).

135. Staff supports Public Service’s proposal to pass through the cost savings attributable to short-term purchases under the JDA to ratepayers using the ECA because the proposal is consistent with current practice. Staff recommends adoption of this proposal.

136. Staff opposes Public Service's proposal to share (with 90 percent going to ratepayers and 10 percent going to shareholders) the retail jurisdictional share of margins from JDA short-term sales. Staff presents two arguments in support of its position.

137. First, Staff asserts that the prerequisite for adopting Public Service's sharing proposal is a determination that JDA short-term sales are Gen Book short-term sales under the Trading Business Rules and that this is the sole basis for sharing on which Public Service relies. For the reasons discussed above, JDA transactions (including short-term sales) are not Gen Book transactions under the Trading Business Rules. Thus, the prerequisite is not met.

138. Second, Staff asserts that the Commission should not apply the current Gen Book trading margins margin-sharing to short-term sales made under the JDA. Staff states:

It is also troubling that the Company has attempted to claim a share of sales margins as essentially a bonus for entering into the JDA, when the sharing mechanism was clearly designed to be an incentive.^[NOTE 19] [PSCo witness] Welch asserted that the Company's belief or expectation that it would share in JDA sales margins acted as an incentive for the Company to pursue the JDA. This is hard to accept since the Company still intends to move forward with the JDA even if [it] receives no sharing and will act no differently in implementing the JDA irrespective of whether or not it receives a share of margins. It seems indisputable that the margin sharing incentive was not designed to apply in this situation and the Company is only hoping to take advantage of its existence to inappropriately benefit its shareholders.

NOTE 19 states: Hrg. Exh. 6, pages 2-3 ("The espoused purpose of the ICA 50/50 energy cost sharing is to align the interests of shareholders and customers. This alignment provides appropriate incentives to engage in transactions that benefit both shareholders and customers").

Staff SOP at 6-7 (some footnotes omitted).

139. Because Public Service's stated reasons in support of the proposed sharing are not supported, Staff recommends that 100 percent of the savings be passed-through the ECA to Public Service's customers.

140. For these reasons, Staff urges the Commission to deny the requested sharing (or incentive) payment and requests that the Commission order Public Service to pass through 100 percent of the JDA transaction trading margins to Public Service customers (using the ECA).

c. Accounting Treatment.

141. Staff makes several recommendations with respect to accounting treatment.

142. Except as discussed below, Staff supports Public Service's proposed FERC accounting treatment of the JDA Management Fee, the JDA-related capital costs, the JDA-related O&M costs.

143. Staff recommends that the Commission explicitly state that, in this Proceeding, it makes no determination with respect to prudence and makes no determination with respect to cost recovery. In support of this recommendation, Staff asserts: (a) in this Proceeding, Public Service has not sought these Commission determinations; (b) in this Proceeding, Public Service has not proposed for Commission approval a method to allocate the net benefits of JDA revenues and costs between PSCo customers and Public Service; (c) in this Proceeding, Public Service has not proposed for Commission approval a method to address the treatment of the Management Fee revenues; and (d) consequently, these issues must be taken up in a future rate proceeding.

144. To assure that the Management Fee revenues, the JDA-related capital costs, and the JDA-related O&M expenses are known and available for review and consideration in a future rate proceeding, Staff recommends that the Commission order Public Service to track and to account for these revenues, costs, and expenses. In support of this recommendation, Staff asserts: (a) in the Application at ¶ 14, Public Service states its intention to record the Management Fee revenues in FERC Account 456; (b) at the evidentiary hearing, Public Service confirmed its intention to retain for its shareholders the Management Fee revenues, net of the

amortization of IT and other costs, for the period prior to a change in base rates in the next rate case, and this is approximately \$ 250,000 in revenues retained for shareholders each year until new base rates are established; and (c) Hearing Exhibit No. 8 shows that Public Service “plans to shift the responsibility for recovery of the IT investment asset to ratepayers once new base rates go into effect with no guarantee that the asset will be used and useful in these later years” (Staff SOP at 8). To permit prudence and cost recovery issues to be addressed in a future rate proceeding, Staff recommends that the Commission order Public Service “to defer both the [Management Fee revenues] and the Amortized IT Investment and Cost of Capital in regulatory asset and liability accounts, such that treatment can be addressed in the general rate proceeding that the Company plans to file in 2017” (*id.* at 8-9).

145. For these reasons, Staff supports the accounting treatment, in part; recommends that the Commission make it clear that prudence and cost recovery are deferred to a future rate proceeding; and recommends that the Commission order the creation of regulatory asset and liability accounts as described by Staff.

d. JDA-Related Reporting by Public Service.

146. Staff supports Public Service’s JDA-related reporting proposals as discussed in the Company’s testimony.

B. Discussion.

147. For the reasons discussed here: (a) Public Service has not met its burden of proof to establish that the JDA transactions are Gen Book transactions within the Trading Business Rules; (b) Public Service has not met its burden of proof to establish that margin sharing is appropriate for the JDA transactions; (c) with modification or clarification, the accounting

treatment proposed by Public Service is appropriate; and (d) the reporting requirements that Public Service has agreed are appropriate.

1. Treatment of the Joint Dispatch Agreement.

a. Applicability of Trading Business Rules.

148. Public Service requests authorization to treat JDA transactions as Gen Book transactions under the Trading Business Rules. Thus, Public Service has the burden of proof to establish that the JDA transactions are Gen Book transactions within the Trading Business Rules. To meet this burden of proof, Public Service asserts the JDA transactions are short-term energy transactions because they are within the scope of the products that the Commission approved in the 2000 Agreement and are within the terms of the Trading Business Rules. Public Service acknowledges that the Commission has the authority to determine whether these prior approvals encompass the JDA transactions.

149. Based on the evidentiary record, the Company did not meet its burden of proof on this issue.

150. First, the evidentiary record does not support Public Service's position that the JDA transactions are within the scope of the products the Commission approved in the 2000 Agreement.

151. The 2000 Agreement defines short-term transactions as those lasting not longer than 12 months and lists products that are within the definition of short-term transactions. Of the listed products, two (*i.e.*, economy and short-term firm sales and system hedges) appear to be applicable. Upon closer review of the 2000 Agreement as a whole, neither product includes JDA transactions.

152. Economy sales are “short term sales *subject to curtailment* prior to Public Service’s existing firm sales and power pool operating requirements.” 2000 Agreement (Hearing Exhibit No. 6) at 2 (emphasis supplied). Economy and short-term firm sales are “*energy sales that can be physically interrupted* (e.g. economy, 1-hour firm, financially firm)[.]” *Id.* at 4 (emphasis supplied). Joint Dispatch Energy transactions do not occur until the selling JDA Party has met all its Native Load requirements and reliability for the Operating Hour; there is no interruption of these JDA transactions.

153. Short-term transactions include “Rocky Mountain Reserve Group (“RMRG”) sales (spinning reserve service, operating reserve service, and energy associated with activated reserves)[.]” 2000 Agreement (Hearing Exhibit No. 6) at 4. There is little or no persuasive evidence that JDA transactions involve the services and reserves associated with the short-term sales that PSCo makes to the RMRG.

154. Short-term transactions include “system hedges (sales made against the natural excess energy position of the PSCo system and purchases made against the natural deficit energy position of the PSCo system, where the PSCo system means PSCo generation, purchased power resources and native load obligation)[.]” 2000 Agreement (Hearing Exhibit No. 6) at 4-5. JDA transactions may alter the natural excess or deficient energy positions of PSCo, but they are not sales made against those positions.

155. To interpret and to apply it appropriately, the 2000 Agreement must be read as a whole. Each provision must be read to give it effect and meaning. The 2000 Agreement states that the listed products are representative of the products that, at the time of the 2000 Agreement, PSCo bought and sold “*in the wholesale market.*” Hearing Exhibit No. 6 at 5 (emphasis

supplied). The ALJ reads this statement as a condition on the applicability of the 2000 Agreement: products must be bought and sold in a wholesale market.

156. In a wholesale market, Public Service enters into individual energy trading transactions with trading partners who are specific to the transactions (and may not be PSCo's trading partners in another transaction); each transaction has terms and conditions that are specific to the transaction (and may not be the same as the terms and conditions of another transaction); and the energy prices, which likely include elements in addition to cost, are set by the market in advance of the transaction. Under the JDA, Parties (including Public Service) enter into energy purchases and sales in accordance with the terms of the JDA; each transaction involves the same trading partners (*i.e.*, the JDA Parties); each transaction has the same terms and conditions (*i.e.*, the provisions of the JDA); and the energy price is set after the transaction has occurred.

157. Because JDA transactions are substantially dissimilar to the purchase and sale of energy in a wholesale market, JDA transactions do not come within the scope of the listed products that the Commission approved in the 2000 Agreement.

158. Second, the evidentiary record does not support Public Service's position that the JDA transactions are Gen Book transactions under Trading Business Rules.

159. The Trading Business Rules contain definitions of terms. "Gen Sale means a wholesale sale that is expected to be supplied from the System Resources not needed to serve Native Load." Hearing Exhibit No. 3 at Attachment AGT-1 at 1. "Native Load means jurisdictional retail and long-term wholesale sale load obligation." *Id.* at 2. "System Resources means power supply resources owned or long-term power purchases controlled by the Company that are used to serve Native Load." *Id.*

160. The Trading Business Rules definition of Native Load is the same (or substantially the same) as the definition in the JDA. The Trading Business Rules definition of System Resources is subsumed within the JDA definition of Party Resources: the “Party-owned generators and Power Purchases contracted by a Party, in each case, designated for use under [the JDA] by such Party.” Hearing Exhibit No. 1 at Attachment JTW-1 at 5.

161. Public Service asserts that, applying these definitions, JDA transactions are Gen Book transactions within the Trading Business Rules and should be treated as such. Staff argues that Public Service’s analysis of the Trading Business Rules fails to consider the language of the entire document and that, when one looks at the entire document, JDA transactions are not Gen Book transactions. The ALJ finds Staff’s argument to be persuasive.

162. A JDA transaction is completed within the Operating Hour in which it occurs and has a duration of less than one month. Section II.C.2 of the Trading Business Rules contains the purchase/sale criteria for electric transactions of less than one month duration and states:

The Generation Book may only purchase when the market price is below the projected decremental cost of production. The Generation Book may only make sales when the market price is above the projected incremental cost of the system. ... In addition, if PSCo traders believe that the intra-day hourly market may be more favorable to the Generation Book than pre-scheduled purchases, PSCo may choose to meet its Native Load requirements in the hourly market.

Hearing Exhibit No. 3 at Attachment AGT-1 at 5-6 (emphasis supplied).

163. The existence of a market price, which is established *before* a transaction, is a condition precedent on Gen Book purchases and sales. As discussed above, the JDA energy price is established *after* the transaction has occurred. For the reasons discussed above and in Staff’s SOP, there is no market price for JDA purchases and sales. In the absence of a market price, JDA transactions are not Gen Book transactions.

164. In addition, “[r]eal-time Generation Book activities are guided by the immediate needs of Native Load customers, unit availability, and *hourly market prices*.” Trading Business Rules (Hearing Exhibit No. 3 at Attachment AGT-1) at 6. With respect to Gen Book short-term energy sales of less than one month duration, the Trading Business Rules: (a) require PSCo’s energy traders to exercise their judgment and expertise in executing energy trades; (b) permit a PSCo energy trader to “modify [the EMS-generated buy and sell] signals when the trading analyst believes that the model output is not accurately reflecting system conditions” (Hearing Exhibit No. 3 at Attachment AGT-1 at 6), provided those modifications are documented; and (c) require PSCo’s traders to “be guided by the Director, Energy Trading and by the Electric Hedging Committee *as to the level of risk to be assumed by PSCo in entering into purchase, sale and displacement transactions*” (*id.* (emphasis supplied)).

165. As discussed above, JDA transactions do not occur in an electric energy market. They do not entail any trader discretion or application of expertise: JDA transactions occur based on EMS-determined set-points. The monitoring, auditing, and correction of JDA transactions occur pursuant to the JDA. The Company’s Director, Electric Trading and the Company’s Electric Hedging Committee are not involved.

166. Moreover, the Trading Business Rules assign

electric, ... transactions ... to either the Generation Book, Hybrid REC Book or Proprietary Book on the basis of the buy or sell decision made at the Effective Date of the contract. ...

Hearing Exhibit No. 3 at Attachment AGT-1 at 11 (emphasis supplied). The Effective Date is the “date that the contract governing the transaction was signed” (*id.* at 1). The JDA -- which governs all JDA transactions -- was signed, and became effective, on October 26, 2015, which

was well before the first transaction under the JDA. Thus, each buy or sell decision under the JDA occurs *after* the date the JDA (*i.e.*, “the contract governing the transaction”) was signed.

167. Taken as a whole, the evidence establishes that the JDA transactions are not Gen Book transactions under the Trading Business Rules.

b. Transactions Governed by the JDA.

168. Staff requests that the decision in this Proceeding make it clear that the JDA transactions are to be governed by the JDA’s terms and conditions. The ALJ agrees that this clarification is useful and is supported by the record. To be clear: the JDA -- and not the 2000 Agreement and not the Trading Business Rules -- govern the terms, conditions, and pricing of JDA transactions.

c. JDA Transaction Accounting.

169. Staff requests that the decision make it clear that JDA transactions are not to be co-mingled with, and are to be tracked, accounted for, and reported separately from, Trading Business Rules transactions. The ALJ agrees that this clarification is useful and is supported by the record. To be clear: JDA transactions are not to be commingled with Trading Business Rules transactions; and, as discussed below with respect to accounting treatment, JDA transactions are to be tracked, accounted for, and reported separately from Trading Business Rules transactions.

d. Approval of Gen Book Transactions.

170. Both CEC and Staff recommend that the Commission order Public Service to seek Commission approval to treat a new type of transaction as a Gen Book transaction under the Trading Business Rules.

171. The 2000 Agreement contains this process, which applies when Public Service elects to trade a product or service not listed in the 2000 Agreement: (a) Public Service must

provide Staff with “a written description ... of the new product or service” (Hearing Exhibit No. 6 at 5); (b) upon receipt of the written description, Staff has 15 days to provide PSCo with a written advisement concerning “whether Staff supports, or objects to, inclusion of the described new product or service in the aggregation of short term transactions” (*id.*); (c) “[i]f Staff supports the inclusion, then the new product or service will be deemed to be added to the stipulated list in” the 2000 Agreement (*id.*); and (d) should

Staff object[] to the inclusion of the new product or service in the aggregation, then Public Service shall bear the burden of going forward and the burden of proof in a subsequent ... proceeding that such new product or service is appropriately included in the aggregation and Staff reserves the right to contest such inclusion in the aggregation.

Hearing Exhibit No. 6 at 5-6. This process is unchanged and has been in effect since 2000.

172. There is little or no persuasive record evidence that the existing process does not work. There is little or no persuasive record evidence that Public Service routinely has disregarded this process. For these reasons, the existing process appears to be functioning as intended. The ALJ will not order Public Service to seek Commission approval to treat a new type of transaction as a Gen Book transaction under the Trading Business Rules.

e. JDA Cost Savings.

173. In the Application, Public Service seeks Commission approval to pass the JDA cost savings through the ECA on an annual basis. This proposal is unopposed, is reasonable, and is consistent with the ECA. The requested approval will be ordered.

f. Prudence, Cost Recovery, and Revenues.

174. Staff asserts that Public Service has not sought a determination with respect to the prudence of JDA transactions. Staff observes that Public Service will file an electric rate case in 2017. For these reasons, Staff recommends that the decision in this Proceeding make it clear that

the issue of prudence will be addressed in a future rate proceeding. The ALJ agrees with Staff. The issue of the prudence of JDA transactions will be addressed in a future rate proceeding.

175. Staff also asserts that Public Service has not sought a determination with respect to cost recovery. Staff observes that Public Service has not proposed for Commission approval a method to allocate the net benefits of JDA revenues and costs between PSCo customers and Public Service. In Staff's opinion, a JDA-related allocation method is necessary and must be developed as none exists at present. Staff observes that Public Service will file an electric rate case in 2017. For these reasons, Staff recommends that the decision in this Proceeding make it clear that the issue of cost allocation and recovery will be taken up in a future rate proceeding. The ALJ agrees with Staff. The issue of cost allocation and recovery will be addressed in a future rate proceeding.

176. Staff further asserts that Public Service has not sought a determination with respect to treatment of the JDA Management Fee revenues. Staff observes that Public Service has proposed for Commission approval a method to address the Management Fee revenues. For these reasons, Staff recommends that the decision in this Proceeding make it clear that the treatment of the Management Fee revenues will be taken up in a future rate proceeding. For the reasons discussed below with respect to accounting treatment, the ALJ will not adopt Staff's recommendation on this issue.

2. Sharing Proposal.

177. Public Service seeks authorization to share the margins on JDA sales 90 percent to ratepayers and 10 percent to shareholders. Thus, Public Service has the burden of proof to establish: (a) the margins on JDA sales should be shared with ratepayers; and (b) assuming margins sharing is appropriate, the appropriate sharing is the Commission-approved sharing of

the margins on Gen Book sales (*i.e.*, 90 percent to ratepayers and 10 percent to shareholders). To meet this burden of proof, Public Service asserts the JDA transactions are Gen Book transactions and, thus, the Commission-approved sharing of the margins on Gen Book sales is the appropriate sharing to apply to the JDA sales margins. Public Service acknowledges that the Commission has the authority to determine whether, in the context of the policy underpinning the sharing of Gen Book margins, it is appropriate to apply the approved sharing to the margins from the JDA sales.

178. Based on the evidentiary record and for the following reasons, the Company did not meet its burden of proof on this issue.

179. First, in support of its request, Public Service relies exclusively on the treatment of trading margins for Gen Book transactions. For the reasons discussed above, the JDA is not a product or service covered by the 2000 Agreement, and JDA sales are not Gen Book sales within the Trading Business Rules. As a result, because it did not prove its sole asserted basis underlying the treatment sought, PSCo has failed to meet its burden of proof on the issue of sharing margins from JDA sales.

180. Second, there is no need for sharing (or any other incentive) to encourage Public Service to engage in JDA transactions. The Trading Business Rules are clear that PSCo energy traders use their experience and expertise, and exercise their informed discretion, to sell energy at the best available wholesale market prices within the constraints of PSCo's system needs and applicable restrictions. To encourage the energy traders to use their best efforts in this endeavor, the Commission has approved sharing of positive Gen Book trading margins.

181. As discussed above, however, energy traders are not involved when Public Service sells energy to another Party under the JDA. After BHCE and TSGT (using the

EMS Portal) input the required information, the EMS establishes the set-point and in each Operating Hour dispatches the Dispatchable Units. The EMS sends electronic signals to the Dispatchable Units equipped with AGC; PSCo personnel are not involved. The only PSCo personnel activity occurs when necessary to assure the dispatch of Dispatchable Units that do not have AGC. These activities are within the normal course of a dispatcher's responsibilities. There is no need for sharing (or any other incentive) to encourage Public Service dispatchers to perform their basic job functions.

182. Third and importantly, as CEC and Staff point out, sharing will not provide an incentive because Public Service is contractually bound to perform under JDA. Indeed, PSCo witness Welch acknowledged (Tr. at 13:24-14:12) that Commission approval of sharing in this Proceeding will not affect PSCo implementation of the JDA (including PSCo's level of effort or performance) because the Company will do what it must to meet its JDA contractual obligations and to carry out its JDA responsibilities. In addition, because FERC has approved the JDA, Public Service must, and will, act in accordance with JDA and take the actions necessary to implement the JDA.

183. For these reasons, Public Service did not meet its burden to establish that the sharing of JDA sales margins is appropriate. The ratepayers should receive 100 percent of the JDA transaction margins through the ECA on an annual basis.

184. Because Public Service did not establish that sharing is appropriate, the ALJ does not reach -- and does not decide -- the issue of whether the proposed sharing percentages are appropriate. Although not deciding the issue, the ALJ notes that the Commission has approved different sharing percentages for different types of Gen Book trades. *See, e.g.,* Decision

No. C06-0193²⁷ at ¶ 28 (“We determine that the sharing percentage for any Generation Book trades which use the Converter should be changed from the current 60% customer/40% Company to 80% customer/20% Company. This change will provide a more equitable allocation of the benefits derived from the Converter to the Colorado ratepayer since the SPS ratepayers will be receiving some of the benefit of the Converter without having to pay for some of its carrying costs.” (footnote omitted)). Thus, had the ALJ found that Public Service established that sharing of JDA sales margins is appropriate (which it did not), the ALJ could have determined that the Gen Book sharing of 90 percent to ratepayers and 10 percent to shareholders is not appropriate when applied to JDA transactions

185. Both CEC and Staff recommend that the Commission make it clear that, for a new type of transaction under the Trading Business Rules, Public Service must seek Commission authorization for sharing the margins. Seeking authorization permits the Commission to address sharing at an early stage. The ALJ finds this recommendation to be appropriate, to be supported by the evidence, and to be consistent with PSCo’s agreement in the 2015 Letter Agreement. The ALJ will adopt this recommendation and will order PSCo to file an application for approval of sharing the margins from a new type of transaction under the Trading Business Rules.

3. Accounting Treatment.

186. Public Service seeks authorization to implement the Company’s proposed accounting treatment of JDA-related revenues (including the Management Fee revenues), capital costs, and O&M expenses. Thus, Public Service has the burden of proof to establish that these accounting treatments are appropriate.

²⁷ That Decision was issued on March 1, 2006 in Proceeding No. 05A-161E, *Application of Public Service Company of Colorado for Approval of HVDC Converter Cost Recovery Mechanism*.

187. No Intervenor opposes the proposed accounting treatment. Staff, however, seeks additional accounting treatments.

188. If the Commission determines that the JDA transactions are Gen Book transactions, Staff recommends that the Commission order Public Service to create separate subaccounts for the JDA transactions to assure that the transactions can be audited and reviewed later. PSCo acknowledges that the Commission can order an accounting treatment in which PSCo separately records and reports JDA-related revenues, capital costs, and O&M expenses but asserts that its proposed accounting treatment and reports to the Commission provide sufficient transparency into the JDA transactions and related revenues, capital costs, and expenses.

189. Because the JDA transactions are not Gen Book transactions, it is necessary to establish the accounting treatment for JDA transactions. The ALJ finds merit in Staff's recommendation. Public Service will be ordered to identify clearly and to record all JDA-related capital costs, O&M expenses, and revenues in separate general ledger accounts in order to track the JDA-related costs and revenues. This will permit later audit and review of those costs and revenues in a future rate proceeding. Public Service may use subaccounts in the FERC accounts identified in the Application and PSCo's testimony.

190. Staff also recommends that the Commission order PSCo to defer the Management Fee revenues in a regulatory asset account and to defer the cost of capital and the amortized JDA-related capital costs in a regulatory liability account. The ALJ will not adopt this recommendation because: (a) the ALJ finds Public Service's argument about the treatment of revenues, capital costs, and O&M expenses between rate cases to be persuasive; and (b) the accounting treatment ordered in this Decision is sufficient to allow later identification and consideration of the JDA-related revenues, capital costs, and O&M expenses.

4. JDA-Related Reporting by Public Service.

191. Public Service offers to make JDA-related filings and reports to the Commission. These filings and reports are described in the Application and in Public Service testimony and were expanded in oral testimony during the evidentiary hearing.

192. No Intervenor opposes the proposed filings and reports. In addition, because it agreed to the filings and reports, ordering PSCo to make them will not place an undue burden on PSCo.

193. With respect to the reporting requirements to which Public Service agreed during the evidentiary hearing, CEC asked about -- and it is unclear whether PSCo agreed to -- monthly reports on the delays in implementing the JDA and the Company's investigation of JDA delays. CEC asserts that these reports are necessary and reasonable because: (a) there have been, and continue to be, delays due to technical issues with the EMS Portal; and (b) without knowing whether the JDA is working as planned, ratepayers will have no way to know whether or when the JDA infrastructure is used and useful. Because it is unclear whether Public Service agreed to this type of report and because the ALJ finds CEC's rationale persuasive, the ALJ will order Public Service to file monthly reports as described here until the JDA is operational.

194. Public Service will be ordered to file the JDA-related reports and to make the JDA-related filings that the Company has agreed to make to the Commission.

V. CONCLUSIONS

195. The Commission has subject matter jurisdiction over this Proceeding and has *in personam* jurisdiction over Public Service in this Proceeding.

196. The Application should be, and will be, granted in part.

197. For the reasons discussed above, the Company's request for a determination that the JDA transactions are Gen Book transactions and that the Trading Business Rules apply to those transactions should be, and will be, denied.

198. For the reasons discussed above, the Company's request for an order authorizing it to receive a share of the JDA transactions-related savings should be, and will be, denied.

199. For the reasons discussed above, the Company's request to include the JDA transactions in the ECA should be, and will be, granted.

200. For the reasons discussed above, the Company should be, and will be, ordered to pass through the ECA 100 percent of the JDA transactions-related savings to Public Service's electric customers.

201. In this Proceeding the Commission has not addressed, and has made no findings or determinations with respect to: (a) the prudence of the JDA; (b) the prudence of any JDA transaction; and (c) issues pertaining to JDA-related cost recovery. As a result, to obtain a Commission determination on the issues of the prudence of the JDA, of the prudence of specific JDA transactions, and of JDA-related cost recovery, Public Service must seek such determinations in a future proceeding.

202. For the reasons discussed above, the Company should be, and will be, ordered to use the accounting treatment for the JDA-related revenues, capital costs, and O&M expenses as that accounting treatment is described in the Application and the Company's testimony, as clarified and modified by this Decision.

203. For the reasons discussed above, the Company should be, and will be, ordered to make the compliance filings and reports to which it agreed, as those filings are described in the Application and the Company's testimony, as clarified and modified by this Decision.

204. Pursuant to § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

VI. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the Verified Application filed by Public Service Company of Colorado (Public Service) on April 18, 2016 is granted in part.

2. Consistent with the discussion above, the request by Public Service that the Commission find that the Joint Dispatch Agreement (JDA) transactions are Generation Book Transactions and are governed by the Trading Business Rules is denied.

3. Consistent with the discussion above, the request by Public Service for authorization to receive sharing of the positive JDA transaction margins is denied.

4. Consistent with the discussion above, Public Service shall pass through to its electric customers 100 percent of the JDA-related cost savings using the Electric Commodity Adjustment and without sharing with Public Service.

5. Consistent with the discussion above, the accounting treatment proposed by Public Service for the Management Fees received by Public Service pursuant to the JDA, for JDA-related capital costs, and for JDA-related Operations and Maintenance (O&M) expenses, as modified and clarified by this Decision, is adopted.

6. Public Service shall use the accounting treatment for the Management Fees received by Public Service pursuant to the JDA, for JDA-related capital costs, and for JDA-related O&M expenses, as that accounting treatment is described in the Application and the Public Service testimony in this Proceeding, as modified and clarified by this Decision.

7. In this Proceeding, the Commission has not addressed, and has made no findings or determinations with respect to, the prudence of the JDA.

8. In this Proceeding, the Commission has not addressed, and has made no findings or determinations with respect to, the prudence of any JDA transaction.

9. In this Proceeding, the Commission has not addressed, and has made no findings or determinations with respect to, issues pertaining to JDA-related cost recovery.

10. To obtain a Commission determination on the issues of the prudence of the JDA, of the prudence of specific JDA transactions, and of JDA-related cost recovery, Public Service must seek such determinations in a future proceeding.

11. Consistent with the discussion above, the filing requirements to which Public Service agreed, as modified and clarified by this Decision, are adopted.

12. Public Service shall make the filings to which it agreed as those filings are described in the Application and the Public Service testimony in this Proceeding, as modified and clarified by this Decision.

13. 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.

14. 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.

15. In accordance with the stipulation of the Parties, the time within which to file exceptions to this Recommended Decision is ten calendar days after service of this Decision.

a) If no exceptions are filed within ten calendar 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.

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

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge