

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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RE: IN THE MATTER OF THE )  
APPLICATION OF PUBLIC SERVICE )  
COMPANY OF COLORADO FOR )  
APPROVAL OF A NUMBER OF ) PROCEEDING NO. 17A-0462EG  
STRATEGIC ISSUES RELATING TO ITS )  
ELECTRIC AND GAS DEMAND SIDE )  
MANAGEMENT PLAN )

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NON-UNANIMOUS COMPREHENSIVE SETTLEMENT AGREEMENT

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I. **INTRODUCTION & IDENTIFICATION OF PARTIES**

1. This Settlement Agreement is a full and complete resolution of all issues raised in Proceeding No. 17A-0462EG, Public Service Company of Colorado's ("Public Service" or the "Company") Verified Application for Approval of a Number of Strategic Issues Relating to its Electric and Gas Demand Side Management ("DSM") Plan for all parties that have joined in the Settlement Agreement. The joining parties to the Settlement Agreement include: Public Service, Trial Staff of the Commission ("Staff"), the Office of Consumer Counsel ("OCC"), Western Resource Advocates ("WRA"), Climax Molybdenum Company ("Climax"), the Energy Efficiency Business Coalition ("EEBC"), Energy Outreach Colorado ("EOC"), CF&I Steel LP ("CF&I"), the City of Boulder ("Boulder"), Open Energy Efficiency, Inc. ("OpenEE"), Southwest Energy Efficiency Project ("SWEEP"), and Colorado Energy Consumers ("CEC"). Collectively, the "Settling Parties."

2. Collectively, these parties are referred to as the "Settling Parties".

## II. BACKGROUND

### A. The Company's 2017 DSM Strategic Issues Application

3. Public Service submitted its Verified Application for Approval of Strategic Issue Proposals Relating to its Next Electric and Gas DSM Plan on July 3, 2017. This is the fourth proceeding in which the Colorado Public Utilities Commission ("Commission"), the Company, and interested parties have had the opportunity to examine the larger policy issues that will help shape the Company's next DSM Plan.<sup>1</sup> Similar to previous strategic issues proceedings, the strategic issues decided in this Proceeding will set the basis for the Company's next DSM plan, which the Company anticipates will be filed in 2018 after a final order is issued in this Proceeding.

4. In support of its Application, Public Service submitted the Direct Testimony and attachments of six Company witnesses. The Company seeks approval of a number of changes to the Company's current DSM implementation and offerings, including, *inter alia*:

- Modifications to the current Performance Incentive and Disincentive Offset;
- The addition of a new Demand Response Performance Incentive;
- Restructuring the Company's Interruptible Service Option Credit ("ISOC") program to eliminate the current Within One Hour program, create a new Within Ten-Minute foundational credit, and grandfather current ISOC customers at the current credit level for ten years;
- Introduction of a geo-targeting product;
- Transition from Strategist® software to PLEXOS® to more accurately determine marginal energy prices for purposes of calculating avoided energy costs.

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<sup>1</sup> The first Strategic Issues proceeding was Proceeding No. 07A-0420E, and the next two were Proceeding Nos. 10A-0554EG and 13A-0686EG.

5. The Commission deemed the Application complete by Decision No. C17-0659-I mailed on August 14, 2017, and set the hearing *en banc*. In the same Decision the Commission acknowledged the intervention by right of Staff, OCC, and CEO, and granted the permissive interventions of WRA, Climax, Denver, EEBC, EOC, CF&I, Boulder, OpenEE, Sierra Club and Natural Resources Defense Council (together “SC/NRDC”), SWEEP, Colorado Solar Energy Industries Association (“CoSEIA”), Colorado Renewable Energy Society (“CRES”), Wal-Mart, and CEC (collectively, the “Parties”).

6. Fifteen intervenors submitted Answer Testimony on December 5, 2017, and six intervenors filed Cross-Answer Testimony on January 23, 2018. In their Answer and Cross-Answer Testimony, intervenors responded to the Company’s proposals and proposals made by other intervenors, with some offering their own proposals.

7. The Company submitted the Rebuttal Testimony of five witnesses on January 23, 2018.

8. Following the submission of Rebuttal and Cross-Answer Testimony, the Company determined that the scope of contested issues was such that it would be worthwhile to commence settlement negotiations. The Company and certain intervenors began settlement negotiations on January 30, 2018. On February 13, 2018, Public Service filed an Unopposed Motion to Amend Procedural Schedule, requesting that the Commission amend the procedural schedule to extend the deadline for stipulations or settlements from February 20, 2018, to February 26, 2018. The Commission granted that Motion by Decision No. C18-0124-I on February 16, 2018. Through the course of

numerous discussions and meetings, the Settling Parties reached this Settlement Agreement on or about February 26, 2018.

### **III. SETTLEMENT TERMS**

#### **A. Public Service's DSM Goals**

9. The Settling Parties agree to the following DSM goals for Public Service:<sup>2</sup>

- **Energy Efficiency Savings Goals**: The 100% energy efficiency goal is 400 GWh annually for 2019 through 2023. The Company will be eligible to earn a performance incentive should it attain between 70% and 125% of the 400 GWh goal, which corresponds to energy savings of 280 to 500 GWh. There is no incremental performance incentive for savings above 500 GWh.
- **Energy Efficiency Demand Reductions Goals**: 75 MW annually for 2019 through 2023.
- **Demand Response Goals**: 2019 – 465 MW, 2020 – 476 MW, 2021 – 489 MW, 2022 – 503 MW, and 2023 – 520 MW. The Company's Demand Response goals are cumulative and exclude demand reductions from the Company's energy efficiency efforts.

10. In addition to the goals set forth above, the Company agrees to include in its annual DSM Report a narrative describing Public Service's contributions to the 2% statewide energy savings goal set forth in Executive Order D2017-015.

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<sup>2</sup> The Settling Parties agree all goals will remain in place through 2023 unless modified by Commission order prior to then.

11. The Settling Parties further agree that any changes to the Company's existing natural gas energy efficiency portfolio will be addressed through the Company's next DSM Plan.

**B. Public Service's DSM Budget**

12. The Settling Parties agree to an annual electric energy efficiency programs budget of \$78 million, with a presumption of prudence for expenditures up to 10% over this budget.

13. The Settling Parties agree to Public Service's maintaining an annual gas DSM budget of \$12 million.

14. The Company agrees to dedicate at least 25% of its DSM expenditures to residential DSM initiatives.

15. Section H below concerning the Low-Income Program further specifies agreed-upon budget conditions.

**C. Public Service's DSM Financial Mechanisms**

16. The Settling Parties agree to three DSM financial mechanisms that include:

***i. Energy Efficiency Performance Incentive***

17. The Company will be eligible to earn a financial incentive based on, and proportionate to, the customer benefits attributable to the Company's energy efficiency portfolio. Accordingly, each year the Company will be eligible to earn a performance incentive equal to a percentage of the estimated present value of net economic benefits generated over the lives of the energy efficiency measures installed during that year. The net economic benefits used to derive the Company's Performance Incentive will exclude non-energy benefits consistent with Section [X] of this Settlement Agreement.

18. The percentage of net economic benefits annually awarded to the Company as a Performance Incentive will be based on four incremental steps. First, the Company will not be eligible to earn a performance incentive for achievements below 280GWh. Next, the Company will be awarded a performance incentive equal to 38% of the incremental net benefits achieved from 280 GWh to below 450 GWh. Next the Company will be awarded a performance incentive equal to 19% of the incremental net benefits achieved from 450 GWh up to 500 GWh. Finally Company will not be awarded any additional performance incentive for achievements above 500 GWh.

19. The following table summarizes the performance incentive incremental steps:

<b><u>Increment of Achieved Energy Savings</u></b>	<b><u>Company's % Share of Incremental Net Economic Benefits</u></b>
Below 280 GWh	0%
From 280 GWh – to below 450 GWh	38%
From 450 GWh – up to 500 GWh	19%
Over 500 GWh	0%

20. The net economic benefits attributable to each increment of energy savings in the above schedule will be based on a simple proration of the net economic benefits attributable to the entire portfolio of energy efficiency measures. For example, if in a given year the Company achieved 550 GWh of savings with estimated total net economic benefits of \$50 million, then the net economic benefits attributable to each increment of energy savings and the resulting performance incentive would be as follows:

<b><u>Energy Savings Increment</u></b>	<b><u>Prorated Net Economic Benefits</u></b>	<b><u>Performance Incentive</u></b>
<u>Below 280 GWh</u>	<u>\$50 million X (&gt;280/550) =</u> <u>\$25,363,636</u>	<u>\$25,363,636 X 0% = \$0</u>
<u>280 GWh – to less than 450 GWh</u>	<u>\$50 million X (171/550) =</u> <u>\$15,545,455</u>	<u>\$15,545,455 X 38% =</u> <u>\$5,907,273</u>
<u>450 GWh – up to 500 GWh</u>	<u>\$50 million X (50/550)</u> <u>= \$4,545,455</u>	<u>\$4,545,455 X 19% =</u> <u>\$863,636</u>
<u>501 GWh – 550 GWh</u>	<u>\$50 million X (50/550) =</u> <u>\$4,545,455</u>	<u>\$4,545,455 X 0% = \$0</u>
<b><u>TOTAL</u></b>		<u>\$6,770,909</u>

21. The Performance Incentive outlined above is based on estimated net economic benefits. In this proceeding the Company's estimate of net economic benefits for achieved savings of 100 percent of the energy savings goal (400 GWh) is approximately \$32 million. Nonetheless, parties recognize that net economic benefits can vary over time with changes to fuel prices and other avoided costs. To protect customers against unforeseen and extreme increases in net economic benefits and the Company's concomitant Performance Incentives, the Company will cap the net economic benefits it uses to determine its Performance Incentive at 150 percent of its estimated net economic benefits in this proceeding. The cap applied to savings at 400 GWh will be 1.5 X \$32 million, or \$48 million. The cap applied to net economic benefits at other levels of achieved energy efficiency savings will be derived from the following formula: (Achieved GWh Savings / 400 GWh) X \$48 million.

22. The cap of 150 percent of estimated net economic benefits described above will not be used to derive the net economic benefits used to screen the energy efficiency portfolio for cost-effectiveness under the MTRC test.

***ii. Energy Efficiency Disincentive Offset***

23. In recognition that DSM runs counter to the Company's business objectives, Public Service will have the opportunity to earn an annual Disincentive Offset of \$1.5 million once the Company achieves 160 GWh of energy efficiency savings, and an additional \$1.5 million once the Company achieves 280 GWh energy efficiency savings. In light of the Company's recently approved revenue decoupling mechanism applicable to its Residential and Small Commercial customer classes, the Disincentive Offset will be collected exclusively from large Commercial & Industrial customers; i.e. excluding customers taking service under residential service schedules or Schedule C.

***iii. Demand Response Incentive***

24. The Settling Parties agree the Company shall have the opportunity to earn an incentive for its demand response achievements through a Demand Response Incentive. The Demand Response incentive will provide the Company the opportunity to earn an incentive equal to 15% of the benefits of its Demand Response products each year, with such benefits to be calculated by applying the Rate Impact Measure Test ("RIM") to the Company's Demand Response achievements, but with such amount capped at no more than \$2.5 million annually. Pilot products will not be included in the calculation of the incentive.

***iv. Incentive Caps***

25. The Settling Parties agree that it is reasonable and in the public interest to cap the Company's total financial incentives (the sum of the Performance Incentive, Disincentive Offset, and Demand Response Incentive) at \$15 million annually. Additionally, the Settling Parties agree that the Company's Demand Response Incentive will be capped at \$2.5 million annually.

***v. Multi-Year Rate Plan***

26. The Settling Parties agree that if the Commission were to approve a multi-year electric rate plan based on future test years that incorporate the net impacts of DSM programs on customer billing determinants, the Company agrees to re-open this Settlement Agreement for the purpose of re-evaluating the DSM Financial Mechanisms.

**D. Interruptible Service Option Credit**

***i. Grandfathered Within 10-Minute Interruptible Service Option Credit Product***

27. The Settling Parties agree to three major structural changes within the Company's Interruptible Service Option Credit ("ISOC") offerings. These changes include the creation of a "Grandfathered" Within Ten-Minute offering, a New Within-Ten Minute offering, and the elimination of the Within One-Hour product.

28. More specifically, customers that are enrolled in the Company's Within Ten-Minute ISOC rate prior to December 31, 2018 will have the option to be "grandfathered" for a term of 10 years and at a foundational credit level of \$15.97/kW-month. While the Company's ISOC tariff establishes the full terms and conditions applicable to this rate, Settling Parties expressly agree that grandfathered customers will not be subject to early termination penalties if the grandfathered customer

permanently reduce the ISOC load at their applicable facilities during the term. Additionally, grandfathered ISOC customers will not be subject to penalties if these customer relocate an enrolled facility outside of the Company's electric service territory.

29. In any other event, if a grandfathered customer wishes to leave the ISOC program during the ten-year term, the customer will be required to provide the Company with three years notice and may be subject to an early termination penalty equal to 36 months of credits, as set forth in Exhibit 1.

***ii. New Within 10-Minute Offering***

30. The Settling Parties agree to the creation of a New Within-Ten Minute ISOC offering. The foundational credit for the Company's New Within-Ten Minute offering will be \$11.27/kW-month. Further, the Company agrees to re-evaluate the new Within Ten-Minute credit as part of the next Strategic Issues proceeding.

***iii. Within One-Hour Program***

31. The Settling Parties agree it is reasonable and appropriate for the Company to eliminate the Within One-Hour ISOC program.

**E. Avoided Cost Modelling**

***i. PLEXOS®***

32. The Settling Parties do not oppose the Company's transition from Strategist® software to PLEXOS® software for purposes of calculating Public Service's avoided cost of energy associated with its DSM offerings. However, as part of this transition, the Settling Parties agree to the following terms and conditions:

- The methodologies used to derive inputs will be consistent with the most recent Phase I ERP Base Case scenario.

- The Company will provide the confidential PLEXOS® hourly marginal prices used to determine the avoided energy value of DSM plans. The Company will also provide the average hourly marginal price for each hour of the day (24) by month (12) with each DSM Plan application.
- Public Service will not remove combustion turbine (“CT”) starts in any modeling simulations for DSM plan evaluations.
- The load forecast used in DSM Plan modeling will include embedded DSM from historic plans but will not include incremental DSM from future DSM Plans that determine forecasted DSM savings.
- Public Service will provide a narrative explaining any adjustments to model inputs or outputs to correct for unexpected DSM modeling results.
- Public Service will not apply negative hourly prices in calculating DSM avoided cost.
- Public Service will provide as part of future DSM Plans the load shape data for energy efficiency measures, avoided energy cost values and projected avoided CO2 emissions (in pounds).
- The marginal energy cost approved in a DSM Plan will be utilized for the duration of that DSM Plan.

***ii. Avoided Cost of Capacity***

33. Regarding calculation of the Company’s avoided cost of capacity, the Settling Parties agree that the inputs and assumptions shall be consistent with the approved inputs and assumptions from the most recent ERP Base Case scenario.

34. Further, the avoided cost of capacity will be the resource approved in the most recent Phase I ERP at the time of the DSM Plan filing. Currently, that resource is a Large or Generic Combustion Turbine.

***iii. Avoided Transmission and Distribution Costs***

35. Finally, with respect to calculating the avoided transmission and distribution costs, Settling Parties agree that Public Service will use the values identified in the Company's study approved in Proceeding No. 16A-0512EG.

**F. Non-Energy Benefits**

36. The Settling Parties agree that for purposes of evaluating cost-effectiveness, Public Service shall apply a 50% non-energy benefits "add" to low-income measures and products and a 20% adder to all other measures and products. However, the non-energy benefits adder will only apply for screening purposes; the non-energy benefits adders will be excluded from the calculation of the net economic benefits used to derive the Company's financial incentives. In addition, the Settling Parties acknowledge that the Company will continue to maintain discretion over which measures and products are included in its DSM Plans.

37. Settling Parties reserve the right to argue in future DSM Strategic Issues proceedings for the inclusion of avoided CO<sub>2</sub> costs in the Company's Modified Total Resource Cost ("MTRC") calculations for purposes of DSM goal-setting.

**G. Geo-Targeting**

***i. Program Implementation***

38. The Settling Parties agree that the Company may include a Geo-Targeting product on a pilot basis in the 2019/2020 DSM Plan, along with a proposed geo-targeting budget. The Company may propose up to three projects per year during its

pilot addressing areas where distribution upgrades are necessary due to increased demand in a particular areas and targeting the Company's DSM offerings to areas with the greatest system constraints. Settling Parties agree that the costs associated with the Company's Geo-Targeting pilot will be included within the Company's total DSM budget. The Company reserves the right to propose geo-targeting products or pilots in subsequent DSM plans.

***ii. DSM Pilot Notification***

39. The Company maintains the right to propose modifications to Geo-Targeting projects approved in future DSM plans through a 60-Day Notice process, so long as those modifications do not result in the Company's exceeding the geo-targeting budget set forth in its approved DSM Plan.

40. Settling Parties agree that it may be reasonable and appropriate for the Company to incent geo-targeted customers with greater DSM rebates than non-targeted customers during the pilot. The Company agrees to identify the geographic areas with the greatest system constraints that will be targeted, as well as the magnitude of the enhanced rebates, on a project-by-project basis through the DSM Plan.

***iii. Calculation of Incremental Savings***

41. The parties do not oppose the methodology to determine incremental costs, benefits, and net benefits from geo-targeting as described in the Direct Testimony of Donna A. Beaman. The relevant pages of this Direct Testimony are provided in Exhibit 2 to this Settlement Agreement.

**H. Low-Income DSM Program**

***i. Low-Income Budget and Goal***

42. The Company will spend not less than \$3.8 million annually on its low-income electric energy efficiency program from 2019 through 2023. Further, the Company will spend not less than \$3.3 million annually on its low-income gas energy efficiency program from 2019 through 2023.

43. The Company's low-income energy efficiency budget will also include an incremental \$275,000 annually to address health and safety measures.

***ii. Health & Safety***

44. The Settling Parties agree the Company and EOC will develop a joint methodology to determine increased rebates available to participants in the Single Family Weatherization product to address health and safety issues that prevent the installation of energy efficiency measures. Such rebates will be available to any participant that is both a customer of Public Service and the owner and occupier of the single family dwelling. For non-owner-occupied single family dwellings, the Company and EOC will review potential applications for health and safety rebates. However, EOC will be responsible for documenting the ownership status of the dwelling and documenting the health and safety impediment that prevents the installation of the energy efficiency measure. These rebates will be included in the Company's next DSM Plan.

***iii. Increased Rebates***

45. The Settling Parties agree that the Company and EOC will meet prior to the Company filing its next DSM Plan to review the Company's prescriptive energy efficiency rebates offered through the Single Family Weatherization, Multi-Family Weatherization, and Non-Profit Energy Efficiency products and determine in good faith if adjustments to the prescriptive rebates are warranted.

***iv. Self-Installation of Measures***

46. The Settling Parties agree that the Company may include self-installation measures within the Low-Income program. Any savings associated with Low-Income self-installation measures will be recorded in the applicable Low-Income product.

***I. Cost-Effectiveness Screening and Methodology***

***i. Commission Determination of Cost-Effectiveness***

47. For the purposes of meeting its statutory cost-effectiveness requirements, Public Service will continue to conduct cost-effectiveness screening at the program level. However, Settling Parties recognize that Public Service may also conduct cost-effectiveness screening at the product or measure level to include or exclude non-cost-effective products or measures. The Company has the responsibility to meet or exceed its energy efficiency goals in a cost effective manner.

48. The Settling Parties agree to the following definitions of program, products and pilots, and measure, as set forth at page 23 of Mr. Brockett's Direct Testimony:

- Program: a collection of similar products targeted to a specific customer segment. Current programs in DSM Plans include Business, Residential, Low-Income, and Indirect programs.<sup>3</sup>
- Products and Pilots: a collection of similar measures marketed individually or holistically to end-use residential, business, or low-income customers. Pilots target a specific type of product, and often seek to evaluate and demonstrate the benefits of a measure or collection of measures for a period prior to full-scale deployment.

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<sup>3</sup> Indirect Programs include products and services that support planning, analysis, administration, and evaluation of products with direct savings impacts as well as development and implementation of the Plan.

- Measure: a technology, service, or device that enables end-use customers to reduce their electric energy use and peak demands. Examples include water-heater blankets within the Home Energy Squad product and ground source heat pumps within the High Efficiency Air Conditioning product.

***ii. Methodology***

49. For purposes of determining cost-effectiveness, the Company will continue to use the current MTRC methodology. Consistent with the Company's most recent Electric Resource Plan ("ERP") base case scenario, Public Service will use a Social Cost of Carbon value of \$0.

50. In each DSM Status Report until a final order is issued in the next DSM Strategic Issues proceeding, the Company will conduct a sensitivity cost-benefit analysis at the portfolio level using the Social Cost of Carbon or the Regulatory Cost of Carbon scenarios ordered in the most recent ERP.

**J. Behavioral Savings, Secondary Site Savings, & Vendor Incentives**

***i. Behavioral Savings***

51. The Settling Parties do not oppose Public Service's using an incremental savings method instead of an average savings method to calculate behavioral energy efficiency savings. The incremental methodology claims the full value of behavioral energy savings in the first year and any incremental savings, relative to the first year, in subsequent years.<sup>4</sup>

52. Public Service will provide documentation of its Commercial & Industrial behavioral savings calculations with its annual DSM Status Report.

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<sup>4</sup> Direct Testimony of Shawn White, p. 72, lines 3-14.

***ii. Secondary Site Savings***

53. The Settling Parties agree that Public Service may claim secondary site savings in its energy, demand, and net benefit calculations for purposes of the Company's electric DSM offerings, to the extent these savings have not otherwise been claimed by the Company. The Company will provide documentation showing how it calculated secondary site savings and associated benefits along with its annual DSM Report.

***iii. Vendor Incentives***

54. The parties agree that the Company may utilize midstream incentives in future DSM plans.

55. Parties do not oppose the Company's proposed methodology, as identified in Exhibit 3, to categorize a portion of its vendor incentives as rebate spending not administrative costs. The Company will include in any future comprehensive evaluation of a product with such incentives or rebates a survey of participating vendors to determine the value of the incentive or rebate that is passed through to retail customers. To the extent the evaluation shows that costs are being passed through either as rebates or a reduction to the cost of the energy efficiency measure, the Company will classify those incentives as a rebate. Any costs not shown to be passed through to retail customers will be treated as administrative costs.

56. Any comprehensive evaluation will include an appendix to the report that includes supporting documentation relied upon by the third-party evaluator to determine the proportion of vendor or midstream incentives passed through to customers.

**K. Calculation of Avoided Emissions**

57. Settling Parties do not oppose the Company's proposed methodology to determine avoided emissions. The Company will calculate the avoided emissions based upon the load shape of the specific measure. When the avoided emissions for a measure cannot be calculated based on such a load shape, the Company will continue to use the average emissions rate.

**L. Product-Related Matters**

***i. Core Services Offering***

58. The Settling Parties agree that the Company will offer the following core services as part of its 2019-2023 DSM plans:

- Residential weatherization and building envelope;
- Heating and cooling;
- Commercial new construction;
- Energy audits and design assistance; and,
- Commercial lighting.

59. However, the Settling Parties acknowledge that the Company maintains the discretion to determine the specific products or measures offered to provide these services and the implementation design of those products.

***ii. Innovative DSM Products***

60. The Company agrees to work with OpenEE, EEBC, EOC, and SWEEP to identify and define innovative programs and identify how those programs can be implemented by the Company in future DSM Plans.

**M. Tariff, Compliance, and Other Filings**

61. The Settling Parties do not and will not oppose the Company seeking Commission authorization to file a compliance advice letter within 90 days of the effective date of its final order, but on not less than ten days' notice, with revised tariff sheets reflecting all changes to the Company's Schedule ISOC that are approved as a result of this proceeding.

62. In addition, the Settling Parties do not and will not oppose the Company seeking Commission authorization for the Company to file a compliance advice letter within 90 days of the effective date of its final order, but on not less than ten days' notice, with revised electric Demand Side Management Cost Adjustment ("DSMCA") tariff sheets reflecting all changes to the Company's DSMCA tariff that are approved as a result of this filing.

63. Public Service commits to filing its next DSM Strategic Issues proceeding on or before March 1, 2022. Unless otherwise specified herein, this Settlement Agreement shall remain in full force and effect until a final order is issued in the Company's next DSM Strategic Issues proceeding.

**N. Use of AMI Data to Enhance EE Products and Offerings**

64. The Settling Parties support Public Service using AMI data to enhance future energy efficiency products and programs.

**O. Community Engagement**

65. The Company agrees to present community participation in DSM programs by product in its annual Community Energy Reports. Specifically, Public Service will include participation, savings, and rebates paid by product, to the extent

there are no conflicts with the Commission's data privacy rules beginning with the Community Energy Report published in 2020.

#### **IV. GENERAL PROVISIONS**

66. Each Settling Party understands and agrees that this Settlement Agreement represents a negotiated resolution of all issues the Settling Party either raised or could have raised in this proceeding. Each Settling Party understands that the Commission's approval of this Settlement Agreement shall constitute a determination that the Settlement Agreement represents a just, equitable, and reasonable resolution of these issues. Accordingly, the Settling Parties believe that resolving these issues in this proceeding through this negotiated Settlement Agreement is consistent with Commission Rule 1408 encouraging settlement, in the public interest, and that the results of the compromises and agreements reflected in the Settlement Agreement are just, reasonable, and in the public interest.

67. Each Settling Party has the discretion to sponsor a witness at any proceeding the Commission holds to address the Settlement Agreement. In the event that a Settling Party sponsors a witness, its witness will testify only in support of the Settlement Agreement and all of the terms and conditions of the Settlement Agreement.

68. The Settling Parties agree that all pre-filed testimony and exhibits in the proceeding submitted prior to the filing of this Settlement Agreement by any Party shall be admitted into evidence.

69. Except as expressly stated herein, nothing in this Settlement Agreement shall resolve any principle or establish any precedent or settled practice. Moreover, nothing in this Settlement Agreement shall constitute an admission by any Settling Party

of the correctness or general applicability of any principle, or any claim, defense, rule, or interpretation of law, allegation of fact, regulatory policy, or other principle underlying or thought to underlie this Settlement Agreement or any of its provisions in this or any other proceeding. As a consequence, no Settling Party in any future negotiations or proceedings (other than any proceeding involving the honoring, enforcing, or construing of this Settlement Agreement in those proceedings specified in this Settlement Agreement, and only to the extent, so specified) shall be bound or prejudiced by any provision of this Settlement Agreement.

70. The discussions among the Settling Parties that produced this Settlement Agreement have been conducted with the understanding, pursuant to Colorado law, that all offers of settlement, and discussions relating thereto, are and shall be privileged and shall be without prejudice to the position of any of the Settling Parties and are not to be used in any manner in connection with this or any other proceeding.

71. This Settlement Agreement shall not become effective until the issuance of a final Commission Decision approving the Settlement Agreement, which Decision does not contain any modification to the terms and conditions of this Settlement Agreement that is unacceptable to any of the Settling Parties. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party shall have the right to withdraw from this Agreement and proceed to hearing on any issue(s) that may be appropriately raised by that Settling Party. The withdrawing Settling Party shall notify the Commission counsel, Commission advisors, and the Settling Parties to this Settlement Agreement by email within three (3) business days of the Commission modification that the party is withdrawing from the

Settlement Agreement and that the party desires to proceed to hearing. The email notice shall designate the precise issue or issues on which the party desires a rehearing (the "Hearing Notice").

72. The withdrawal of a Settling Party shall not automatically terminate this Agreement as to any other party. However, within three (3) business days of the date of the Hearing Notice from the first withdrawing party, all Settling Parties shall confer to arrive at a comprehensive list of issues that shall proceed to hearing and a list of issues that remain settled as a result of the first party's withdrawal from this Settlement Agreement. Within five (5) business days of the date of the Hearing Notice, the Settling Parties shall file with the Commission a formal notice containing the list of issues that shall proceed to hearing and those issues that remain settled together with a proposed procedural schedule. The Settling Parties who proceed to hearing shall have and be entitled to exercise all rights with respect to the issues that are heard that they would have had in the absence of this Settlement Agreement.

73. All Parties have had the opportunity to participate in the drafting of this Settlement Agreement. There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

74. This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Settlement Agreement with respect to the issues addressed by this Agreement.

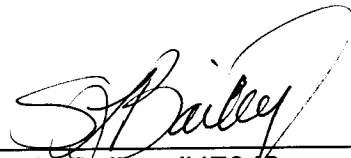
Dated this 26<sup>th</sup> day of February 2018.

Dated this 26<sup>th</sup> day of February 2018.

**AGREED ON BEHALF OF:**

By:   
David L. Eves  
President, Public Service Company of  
Colorado

**APPROVED AS TO FORM:**

By:   
Susan L. Bailey, #47342  
Principal Attorney  
Xcel Energy Services Inc.  
1800 Larimer Street, Suite 1100  
Denver, Colorado 80202  
Telephone: (303) 294-2720  
Fax: (303) 294-2988  
E-mail: susan.l.bailey@xcelenergy.com

**ATTORNEY FOR PUBLIC SERVICE COMPANY  
OF COLORADO**

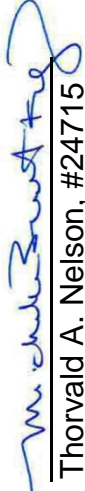
CITY OF BOULDER

/s/ *Debra S. Kalish*

Debra S. Kalish #18858  
Senior Counsel, Office of the City Attorney  
City of Boulder  
Box 791  
1777 Broadway  
Boulder, CO 80306 - 0791  
303 441 3020  
303 441 3859 FAX  
[Kalishd@bouldercolorado.gov](mailto:Kalishd@bouldercolorado.gov)

AGREED ON BEHALF OF:

**COLORADO ENERGY CONSUMERS**

By:   
Thorvald A. Nelson, #24715  
Michelle Brandt King, #35048  
Nikolas S. Stoffel, #44815  
Holland & Hart LLP  
6380 South Fiddlers Green Circle  
Suite 500  
Greenwood Village, Colorado 80111  
(303) 290-1600  
tnelson@hollandhart.com  
mbking@hollandhart.com  
nstoffel@hollandhart.com

Attorneys for Colorado Energy Consumers

AGREED ON BEHALF OF:

**CLIMAX MOLYBDENUM COMPANY**

By:



Richard L. Fanyo, #7238

Polsinelli PC

1401 Lawrence Street, Suite 2300

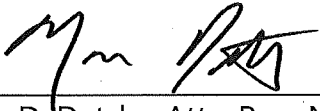
Denver, Colorado 80202

(303) 256-2744

[rfanyo@polsinelli.com](mailto:rfanyo@polsinelli.com)

Attorney for Climax Molybdenum Company

**DIETZE AND DAVIS, P.C.**

By:   
Mark D. Detsky, Atty. Reg. No. 35276  
Gabriella Stockmayer, Atty. Reg. No. 43770  
2060 Broadway, Suite 400  
Boulder, CO 80302  
Phone: (303) 447-1375  
Fax: (303) 440-9036  
Email: [MDetsky@dietzedavis.com](mailto:MDetsky@dietzedavis.com)

**ATTORNEYS FOR ENERGY EFFICIENCY BUSINESS COALITION**

**ENERGY EFFICIENCY BUSINESS COALITION**

By:   
Lauren Poole  
Executive Director  
Energy Efficiency Business Coalition  
14062 Denver West Parkway, Bldg. 52, Suite 300  
Golden, CO 80401  
Phone: (720)274-9764  
Email: [lauren@eebco.org](mailto:lauren@eebco.org)

**ENERGY OUTREACH COLORADO**

By: \_\_\_\_\_

Jennifer Gremmert  
Executive Director

Energy Outreach Colorado  
225 E. 16th Ave. Suite 200


Denver, CO 80203

Phone: (303) 226-5052

Fax: (303) 825-0765

Email: [jgremmert@energyoutreach.org](mailto:jgremmert@energyoutreach.org)

**DIETZE AND DAVIS, P.C.**

By: \_\_\_\_\_

Mark D. Detsky, Atty. Reg. No. 35276

Gabriella Stockmayer, Atty. Reg. No. 43770

2060 Broadway, Suite 400

Boulder, CO 80302

Phone: (303) 447-1375

Fax: (303) 440-9036

Email: [MDetsky@dietzedavis.com](mailto:MDetsky@dietzedavis.com)

**ATTORNEYS FOR ENERGY OUTREACH COLORADO**

AGREED ON BEHALF OF:

**EVRAZ INC. NA (F/K/A CF&I STEEL, L.P)  
D/B/A EVRAZ ROCKY MOUNTAIN STEEL**


By: 

Mark Valentine, #29986  
Keyes & Fox, LLP  
1580 Lincoln St., Suite 880  
Denver, CO 80203  
(303) 908-9391  
mvalentine@keyesfox.com

Attorney for Evraz Inc. NA


APPROVED AS TO FORM:

**OFFICE OF THE ATTORNEY GENERAL**

By:   
Brent Coleman, #44400  
Assistant Attorney General  
Thomas F. Dixon, #500  
First Assistant Attorney General  
Office of the Attorney General  
1300 Broadway, 7<sup>th</sup> Floor  
Denver, Colorado 80203  
(720) 508-6213 (Coleman)  
(720) 508-6214 (Dixon)  
[brent.coleman@coag.gov](mailto:brent.coleman@coag.gov)  
[thomas.dixon@coag.gov](mailto:thomas.dixon@coag.gov)

AGREED ON BEHALF OF:

**COLORADO OFFICE OF CONSUMER  
COUNSEL**

By:   
Scott E. England  
Senior Economist  
Colorado Office of Consumer Counsel  
1560 Broadway, Suite 200  
Denver, Colorado 80202  
303-894-2125  
[scott.england@state.co.us](mailto:scott.england@state.co.us)

Attorneys for Colorado Office of Consumer  
Counsel

AGREED ON BEHALF OF:

**OPEN ENERGY EFFICIENCY, INC.**

By: Victoria Mandell  
Victoria Mandell  
The Mandell Law Firm, LLC  
145 South 36<sup>th</sup> Street  
Boulder, Colorado 80305  
(303) 915-4601  
[vmandell@comcast.net](mailto:vmandell@comcast.net)

Attorney for Open Energy Efficiency, Inc.  
("OpenEE")

APPROVED AS TO FORM:

AGREED ON BEHALF OF:

**OFFICE OF THE ATTORNEY  
GENERAL**

**TRIAL STAFF OF THE PUBLIC UTILITIES  
COMMISSION**

By: /s/ Anne K. Botterud  
Anne K. Botterud, #20726  
First Assistant Attorney General  
Revenue and Utilities Section  
Ralph L. Carr Colorado  
Judicial Center  
1300 Broadway, 8<sup>th</sup> Floor  
Denver, Colorado 80203  
(720) 508-6334 (Botterud)  
(720) 508-6762 (Stevens)  
[anne.botterud@coag.gov](mailto:anne.botterud@coag.gov)

By: /s/ Paul C. Caldara  
Paul C. Caldara  
Professional Engineer  
Colorado Public Utilities Commission  
1560 Broadway, Suite 250  
Denver, Colorado 80202  
(303) 894-2025  
[paul.caldara@state.co.us](mailto:paul.caldara@state.co.us)

**Attorneys for Trial Staff of the Public  
Utilities Commission**

**SOUTHWEST ENERGY EFFICIENCY PROJECT**

**BY: SUE ELLEN HARRISON**

Sue Ellen Harrison #5770  
Attorney for Southwest Energy Efficiency Project  
Sue Ellen Harrison PC  
840 12<sup>th</sup> Street  
Boulder, CO 80302  
303-931-4433  
[seharrisonpc@gmail.com](mailto:seharrisonpc@gmail.com)

February 26, 2018  
Date



\_\_\_\_\_  
Signature

**BY: HOWARD GELLER**

Howard Geller  
Executive Director  
Southwest Energy Efficiency Project  
2334 Broadway, Suite A  
Boulder, CO 80304  
303-447-0078 x1  
[hgeller@swenergy.org](mailto:hgeller@swenergy.org)

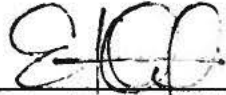
February 26, 2018  
Date



\_\_\_\_\_  
Signature

AGREED ON BEHALF OF:

**WESTERN RESOURCE ADVOCATES**

By: 

Erin A. Overturf, #40187  
Western Resource Advocates  
2260 Baseline Road, Suite 200  
Boulder, Colorado 80302  
[erin.overturf@westernresources.org](mailto:erin.overturf@westernresources.org)  
(720) 763-3724

Attorney for Western Resource Advocates