

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

\* \* \* \*

IN THE MATTER OF THE )  
APPLICATION OF PUBLIC SERVICE )  
COMPANY OF COLORADO FOR )  
APPROVAL OF AN ECONOMIC ) PROCEEDING NO. 20A-0345E  
DEVELOPMENT RATE PROPOSAL )  
PURSUANT TO COLORADO HB18- )  
1271 )

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**UNOPPOSED PARTIAL SETTLEMENT AGREEMENT**

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## **INTRODUCTION AND IDENTIFICATION OF PARTIES**

This Unopposed Partial Settlement Agreement (“Settlement Agreement” or “Agreement”) is filed on behalf of Public Service Company of Colorado (“Public Service” or the “Company”), Trial Staff (“Staff”) of the Colorado Public Utilities Commission (“Commission”) and the Colorado Office of Consumer Counsel (“OCC”) (collectively the “Settling Parties”), pursuant to Rule 1408 of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1. Although not a signatory, Colorado Energy Consumers (“CEC”) do not oppose the Settlement Agreement. This Settlement Agreement is intended to resolve all issues raised in this Proceeding with respect to the Company’s Application for Approval of an Economic Development Rate (“EDR”) Proposal Pursuant to House Bill 18-1271, with the exception of the remaining non-settled issues as set forth in Section XII of this Settlement Agreement.

## **SETTLEMENT AGREEMENT**

The following terms comprise the Settlement Agreement reached by the Settling Parties:

### **I. Tariff Filing Procedures**

The Settling Parties agree that Public Service may file a compliance advice letter within 20 days of the effective date of the Commission’s final order in this Proceeding, but on not less than two business days’ notice, that includes all tariff sheets authorized as part of this Proceeding. This compliance filing will reflect all tariff terms, conditions, and rates approved as part of this Proceeding, and may include: (1) the EDR tariff itself; (2) modifications to the Company’s Distribution Extension Policy; (3) modifications to the

Company's Electric Commodity Adjustment ("ECA") tariff; (4) modifications to the Company's Demand-Side Management Cost Adjustment ("DSMCA") tariff; and (5) any further tariff revisions necessary to implement the Commission's final decision in this Proceeding.

In addition to the base rate discount percentages reflected below, the EDR tariff filed with this compliance advice letter will provide the Company's long-term marginal costs for customer, distribution, transmission, generation, and corporate services, and provide the minimum and maximum rates based on standard Secondary General ("SG"), Primary General ("PG"), and Transmission General ("TG") rates. These marginal costs and minimum and maximum rates will also be stated in all Standard and Non-Standard EDR Contracts. The tariff shall be consistent with the illustrative tariff filed as Attachment SWW-7 to Company witness Steven W. Wishart's Rebuttal Testimony, though modified as set forth in this Settlement Agreement.

## **II. Standard EDR Contract Procedures**

The Settling Parties agree that, in accordance with § 40-3-104.3(6)(b)(II)(B), C.R.S., qualifying customers seeking to add new or expanded load in Colorado of at least three but not more than 20 megawatts ("MW") will not be subject to separate Commission approval in order to enter into a Standard EDR Contract with the Company, provided that customer's EDR contract is also consistent with the terms, conditions, and rates/discounts contained in the Company's EDR tariff approved in this Proceeding (a "Standard EDR Contract").

Public Service will file finalized Standard EDR Contracts on a highly confidential basis in a Miscellaneous Proceeding, such as Proceeding No. 18M-0221E, within 30 days of execution of the Standard EDR Contract. The filing shall include information

demonstrating that the qualifying commercial or industrial customer qualifies for an EDR, as provided below.

Through this highly confidential filing, the Company will provide: (1) the fully executed Standard EDR Contract; and (2) a sworn customer affidavit setting forth the facts supporting the customer's statutory EDR eligibility, and attesting that the customer meets the statutory eligibility criteria. Such customer-specific demonstration of facts may include, but is not limited to:

- An explanation of other jurisdictions considered by the customer;
- Facts reflecting the criticality of electricity supply on the customer's operations;
- Facts reflecting the potential electricity savings and/or incentives the customer might realize by locating or expanding in Colorado versus other jurisdictions; and/or,
- Facts reflecting how the EDR alone or in combination with other incentives makes the Company's service territory a more appealing or competitive place to locate.

Access to highly confidential Standard EDR Contract filings will be restricted to the Commission, Administrative Law Judges for the Commission, Commission Advisory Staff analysts and counsel, Commission Trial Staff analysts and counsel, and OCC analysts and counsel who have executed a Non-Disclosure Agreement.

In the customer affidavit supporting statutory eligibility for a Standard EDR Contract, the customer must attest that the customer forecasts that the cost of electricity will constitute at least five percent of the operating costs for the new or expanded operations subject to the EDR discount. Alternatively, for expanded operations, an existing customer may attest that the cost of electricity is forecasted to constitute at least five percent of the EDR customer's total operating costs for the facility that is being

expanded.<sup>1</sup> If the customer is unable to or otherwise does not make such an attestation, the agreement may proceed under the Non-Standard EDR Contract procedures for review and approval as set forth in Section III of this Agreement.

The Settling Parties agree that when a potential EDR customer is working with the Company to demonstrate its eligibility, new load from electrification of existing processes may be counted for purposes of qualifying under the terms of the Company's EDR tariff ("expand existing load in Colorado and add at least three Megawatts (3 MW) of new load at a single location"), provided the new load from electrification is separately metered and the electrification of the additional load would not have occurred but for an expansion of operations, consistent with § 40-3-104.3(7)(a)(I)(A), C.R.S. The customer will attest to the facts necessary to demonstrate statutory eligibility for such electrified load through the customer's sworn affidavit referenced above.

The Settling Parties further agree that it is appropriate to grant Staff the ability to issue a Notice of Deficiency in the same Miscellaneous Proceeding if Staff disagrees with the Company's EDR eligibility determination for an individual Standard EDR Contract, or if Staff raises a concern that merits additional Commission review, such as a concern that additional enrollment in the EDR program will materially compromise the Company's ability to meet carbon reduction targets or commitments. Staff will have 20 calendar days from the filing of the Standard EDR Contract to issue a Notice of Deficiency, and the Company will have 14 calendar days to file a response to a Notice of Deficiency.

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<sup>1</sup> A facility is defined as all contiguous property owned or leased by the Customer, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of way, or utility rights-of-way.

The Settling Parties also agree that it is appropriate for the OCC to have the opportunity to file comments regarding the Standard EDR Contract for the Commission's consideration within 20 calendar days from the filing of the Standard EDR Contract.

**III. Non-Standard EDR Contract Procedures**

The Company will seek separate Commission approval for and bear the evidentiary burden of proof for, through a standalone application proceeding, any EDR contract seeking to add more than 20 MW of load at a single location or that contains terms, conditions, and/or rates different from those contained in the EDR tariff (a "Non-Standard EDR Contract").

The application will at a minimum include: (1) the fully-executed Non-Standard EDR Contract, filed on a highly confidential basis (with a Motion for Extraordinary Protection as applicable), and (2) a sworn customer affidavit demonstrating the prospective EDR customer's statutory EDR eligibility, and attesting that the customer meets the statutory eligibility criteria. Such customer-specific demonstration of facts shall include information consistent with that provided in the Standard EDR Contract customer affidavit.

The Settling Parties recognize that beneficial EDR opportunities may be time-sensitive or require greater regulatory predictability and/or flexibility. Accordingly, in the case of an application for approval of a Non-Standard EDR Contract, the Settling Parties agree that the Company may request, and, for good cause shown, and that non-Company Settling Parties may oppose, whether it may be appropriate for the Commission to issue a decision within 120 days after deeming the application complete.

#### **IV. Expansion of Voluntary Renewable Programs**

The Settling Parties agree that the Company may seek separate Commission approval for an expansion of an existing voluntary renewable energy program or service offering needed to serve an EDR customer. As part of this request, the Company will provide information demonstrating compliance with §§ 40-3-104.3(6)(d)(I) and (II), C.R.S. Such requests may be made in the form of a standalone application, in conjunction with an application to approve an EDR contract, or in conjunction with another related filing (such as a Renewable Energy Standard (“RES”) Plan proceeding).

The Settling Parties agree that expedited 120-day consideration of such requests is reasonable and consistent with the EDR statute to the extent the requested expansion is to serve incremental EDR load.

#### **V. EDR Rate Design and Program Requirements**

The Settling Parties agree that the Company may enter into EDR contracts of up to 10 years in length. This approach is consistent with the provisions of the EDR statute.

Any future load that relocates to the Company’s service territory from another utility’s service territory in Colorado shall be ineligible for EDR discounts, whether through a Standard or Non-Standard EDR Contract.

For existing customers expanding load in Colorado, the EDR shall only apply to eligible incremental expanded load. Expanded loads eligible for Standard or Non-Standard EDR discounts cannot displace a company’s existing Colorado operations. In other words, existing load at the original meter cannot shift to the new EDR meter. The Settling Parties agree the customer's EDR eligibility will be investigated further and potentially nullified if Public Service observes a material decrease in the original metered load with a corresponding increase in the new EDR meter's load.

**A. Base Rate Discounts**

If the Commission determines that Standard EDR Contract discounts should be offered on a uniform basis throughout the Company's service territory without geographic differentiation (a legal issue that is not resolved through this Settlement Agreement, as described further below), the Settling Parties agree that the base rate discount levels and structure set forth below are reasonable and should be approved by the Commission for Standard EDR Contracts:

| <b><u>Time Period</u></b> | <b><u>Base Rate Discount</u></b> |
|---------------------------|----------------------------------|
| Years 1-3                 | 30%                              |
| Years 4-5                 | 25%                              |
| Years 6-7                 | 15%                              |
| Years 8-10                | 10%                              |

**B. Rate Riders**

The Settling Parties agree that the rate riders applicable to EDR customers include: the Renewable Energy Standard Adjustment ("RESA"); the Colorado Energy Plan Adjustment ("CEPA"); the General Rate Schedule Adjustment ("GRSA"); the General Rate Schedule Adjustment-Energy ("GRSA-E"); the Transportation Electrification Programs Adjustment ("TEPA"); the modified "full cost" DSMCA as set forth in Mr. Wishart's Direct Testimony in this Proceeding and in Attachments SWW-2 and SWW-3 to his Direct Testimony; the modified ECA ("EDR ECA Factor") as set forth in Mr. Wishart's Direct Testimony and in Attachments SWW-2 and SWW-3, subject to modifications herein; and the Clean Energy Plan Rider ("CEPR") once approved by the Commission. All Standard EDR customers will pay these applicable rider contributions.

The Company agrees to true-up the EDR ECA on a quarterly basis in the same manner as the general ECA, based on Public Service's actual cost of energy, and as set forth in Mr. Wishart's Direct and Rebuttal Testimony.

The Settling Parties agree that EDR customers will not be subject to the Purchased Capacity Cost Adjustment ("PCCA"), the Transmission Cost Adjustment ("TCA"), or the Clean Air-Clean Jobs Act ("CACJA") rider.

Any future riders proposed by the Company to be applicable to EDR customers will be evaluated on a case-by-case basis as part of a relevant future proceeding(s).

**C. Program Cap**

The Settling Parties agree that it is reasonable to limit Standard EDR Contract enrollment (*i.e.*, contracts between three and 20 MW of new or incremental load) to 130 MW of total eligible demand. Public Service reserves the right to seek a waiver, variance, or modification to this cap in the future through a Commission filing, with such request to be supported by an affidavit or testimony explaining the facts that warrant such waiver, variance, or modification.

Given that Non-Standard EDR Contracts are subject to individual Commission review and approval, such contracts will not be subject to the EDR program cap.

**D. Demand Response and System Benefits**

The Settling Parties agree that Standard EDR Contract customers shall be required to meet at least one of the following criteria:

- (1) participate in the Company's Interruptible Service Option Credit ("ISOC") program;
- (2) participate in the Company's Peak Partner Rewards Program ("PPRP");

- (3) have a favorable load factor (*i.e.*, estimated to be higher than the average for the applicable rate class based on the Company's last Phase II electric rate case);
- (4) have a favorable load shape (*i.e.*, a lower ratio of total peak energy divided by total off-peak energy compared to the average for the applicable rate class, as estimated based on the Company's last Phase II electric rate case);<sup>2</sup>
- (5) participate in a Commission-approved renewable energy program, equating at least 10 percent of the customer's annual energy use; or,
- (6) install a battery system with storage equal to at least 10 percent of the customer's average daily load.

The credit received by an EDR customer participating in ISOC, PPRP, or other Commission-approved tariff involving an additional discount, will have the additional discount reduced by the same EDR discount level applied to the base rate charges, consistent with the proposal and examples described in Mr. Wishart's Second Supplemental Direct Testimony at page 19, line 16.

## **VI. Marginal Costs**

Except as otherwise modified herein, the Settling Parties support the Company's definition and method for determining EDR marginal costs as set forth in the Company's Direct Case and subsequently modified in its Supplemental and Rebuttal Cases. The Company's long-term marginal cost of service calculations reflected above shall be included in the EDR tariff and in the EDR contract. The Settling Parties agree that the Company's proposed approach, as modified herein, adequately guards against cross-subsidization of EDR costs and should be found sufficient for purposes of compliance with § 40-3-104.3, C.R.S.

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<sup>2</sup> In calculating load shape, energy that is consumed between the hours of noon and 8 p.m. on non-holiday weekdays will be considered on-peak.

The Settling Parties agree that it is appropriate for the Commission to reassess Public Service's long-term marginal cost calculations for customer, distribution, transmission, generation, and corporate services in future Phase II electric rate case proceedings, but Public Service will initiate such a reassessment at least every two years from the rate effective date of the Company's most recent Phase II electric rate case through an appropriate filing.

The Company agrees to reassess its use of combustion turbine technology in calculating incremental generation capacity costs as part of any proceeding where Public Service's long-term marginal cost calculations for customer, distribution, transmission, generation, and corporate services are reassessed for the purposes of EDR marginal cost estimation per the above provision.

The Company will true-up the marginal EDR ECA Factor based on actual marginal cost data on a quarterly basis, according to the following procedures:

- Public Service's actual marginal energy cost will be determined by a retroactive supply curve model using software that incorporates the marginal costs of Public Service's owned resources, contracted resources, and short-term purchases made during the previous quarter.
- Public Service will true-up the difference between forecasted and actual marginal costs using an EDR ECA account that is separate from the normal ECA. In this way, non-EDR customers will not incur a cost spillover or cross subsidy due to cost deviations caused by inaccuracies in Public Service's forecast model.
- Public Service agrees to present a more detailed implementation proposal of its EDR ECA calculations and true-up process, using actual data, with Staff and OCC at a future quarterly ECA operations meeting occurring shortly before or after Public Service contracts with its first EDR customer.
- If Public Service joins an organized market in the future, it will change its marginal energy cost calculations to incorporate real time marginal cost pricing published by the market operator for the EDR ECA true-up.

- Public Service agrees to meet with Staff and OCC at a future quarterly ECA operations meeting shortly before or after it begins participating in an organized market to discuss the proposed method change and implementation details. The Settling Parties agree in principle that using market-based marginal pricing data when available is an appropriately accurate method for determining actual marginal energy costs. The Settling Parties further agree it is reasonable to withhold further judgment on implementation details of this method until wholesale market prices are available. These implementation details include, but are not limited to, identifying which pricing node(s) most accurately reflect the marginal costs of providing energy to Public Service's EDR customers.

## **VII. Customer Protections and Benefits**

The Company agrees to not offer an EDR to any customer in which Public Service or Xcel Energy Inc., or any of Xcel Energy, Inc.'s subsidiaries, has a material financial stake.

The Settling Parties agree that EDR customers will be prohibited from reselling electricity (with the exception of electric vehicle charging stations located on the customer's premises, and potentially energy storage in the future).

The Settling Parties agree that EDR customers in arrears should be required to forego all discounts until their bills are paid in full, consistent with the terms set forth in Attachment HVH-6 to Company witness Hollie Velasquez Horvath's Rebuttal Testimony.

The Company agrees to exclude bad debt expense associated with EDR customers from base rates for the time period applicable to when the EDR customer is taking service under the EDR tariff. The Settling Parties agree that bad debt expense associated with EDR customers should be allocated to EDR customers through the EDR ECA. The Company will propose such recovery through a future cost recovery filing. Once an EDR customer is no longer taking service under the EDR tariff, any potential bad debt expense associated with service under a non-EDR tariff would be treated the same as other non-EDR customer bad debt expense.

Public Service commits to conducting due diligence on applicants prior to entering into any Standard or Non-Standard EDR Contracts, as set forth in the Company's Supplemental Direct Case. For the time a customer is taking service under the EDR tariff, the Company agrees to bear the costs of potential stranded assets or other financial risks associated with EDR customers and commits not to seek any future recovery of such costs from non-EDR customers.

**Claw-backs:** In the event of early termination, customer default or non-fulfillment, or intentional customer fraud or misrepresentation, the Settling Parties agree to the Company's proposed claw-back provisions as set forth in Ms. Velasquez Horvath's Direct, Supplemental Direct, and Rebuttal Testimony and consistent with Attachment HVH-6. The Company's proposed claw-back provisions will be stated in the EDR tariff and in the Standard EDR Contract.

#### **VIII. Compliance with Emission Reduction Objectives**

The Company commits to not contract for coal resources specifically to serve an individual EDR customer's qualifying EDR load.

Should it determine at a future date that its EDR program may hinder compliance with the State's or the Company's emission reduction goals or commitments, Public Service may propose to limit additional enrollment in its EDR program.

#### **IX. Reporting**

##### **A. Annual Reporting**

Public Service agrees to file a Highly Confidential Annual EDR Report on or before June 1 of each year in Proceeding No. 20A-0345E. With observance of the 15/15 Rule and appropriate consideration of customer confidentiality concerns, as well the need to protect commercially sensitive terms of power purchase contracts, Public Service will

contemporaneously file a Public Annual EDR Report. The Highly Confidential and Public Annual EDR Report are collectively referred to in this Agreement as the “Annual EDR Report.”

Access to the Highly Confidential Annual EDR Report will be restricted to the Commission, Administrative Law Judges for the Commission, Commission Advisory Staff analysts and counsel, Commission Trial Staff analysts and counsel, and OCC analysts and counsel who have executed a Non-Disclosure Agreement.

The Annual EDR Report will include information on all EDR customers, whether taking service under a Standard or Non-Standard EDR Contract. This provision is appropriate as it will facilitate Commission and stakeholder review of the Company’s EDR program and provide additional transparency.

If an Annual EDR Report covers the test year for a Phase I or II rate case, and to the extent the Phase I or II rate case is based on a historical test year, Public Service also agrees to file the Annual EDR Report in the relevant rate case proceeding.

The Highly Confidential Annual EDR Report will include, at a minimum, the following information (only with respect to those customers that have already begun taking EDR service):

- Names and addresses of individual EDR customers;
- The term of each executed EDR contract;
- Total aggregate EDR revenues, expenses, and capital costs for the previous calendar year;
- Monthly sales, peak demand, and revenues for each EDR customer, including contribution to all applicable riders;
- Monthly energy supply detail consistent with the quarterly EDR ECA, including details of all purchased power contracts and short-term purchases

for EDR customers, including energy and capacity delivered and contract expenses;

- Estimate of monthly revenues for each EDR customer, with a comparison to revenues that would have been collected under standard tariff rates;
- Information on distribution infrastructure constructed for EDR customers through the line extension policy including information on other customers utilizing off-site distribution facilities;
- Information on transmission infrastructure constructed for EDR customers through the line extension policy; and,
- Job creation and investment in Colorado’s enterprise zones and opportunity zones associated with EDR customers, subject to confidentiality requirements and subject to Public Service’s ability to obtain and disclose such information from EDR customers.

The Public version of the Annual EDR Report will include the following information:

- The customer name, industry, county, and load (MW) subject to an EDR discount under each active EDR contract;
- Whether each EDR customer is taking service under a Standard or Non-Standard EDR Contract;
- A current, aggregate summary of the estimated EDR project load by industry for Public Service’s prospective EDR customers following the format of the example table below (provided for illustrative purposes):

| <b>Industry</b>        | <b>Estimated Project Load (kW)</b> |
|------------------------|------------------------------------|
| Commercial             | 3,500                              |
| Data Centers           | 121,000                            |
| Distribution/Warehouse | 10,000                             |
| Energy                 | 10,000                             |
| Medical                | 9,500                              |
| Telecomm               | 3,000                              |

- Annual incremental emissions impact of EDR customers as a class;
- Aggregated versions of the information listed for the Highly Confidential version of the Annual EDR Report to the extent such data can be aggregated in accordance with the 15/15 Rule, except for confidential terms of purchase power agreements;

- If Public Service's load forecasts incorporate assumptions for load growth due to the EDR program, that information will be summarized in the Public version of the Annual EDR report; and,
- If sensitivities related to load growth for economic development are analyzed in Public Service's Electric Resource Plan ("ERP") and/or Rule 3627 Ten-Year Transmission Plan, that information will be summarized in the Public version of the Annual EDR Report.

**B. Other Reporting and Disclosure**

The Company will update and provide detailed information on the quarterly EDR ECA through its normal quarterly ECA filings, as part of the quarterly update of all EDR rates. The quarterly EDR ECA reporting will include: (1) a forecast of the energy cost to serve EDR customers; (2) the balance of the deferred account; and (3) the resulting quarterly EDR ECA rate.

**X. Ratemaking Treatment and Cost Recovery**

The Settling Parties agree that the Company's EDR marginal cost calculations and the level of EDR discounts are appropriate for review in Phase II electric rate case proceedings, or at least every two years as set forth above. As part of this future review process, the Company will conduct a reassessment of marginal costs and revise accordingly its determination of the appropriate EDR discount level that will apply to EDR contracts that are executed after the EDR discount level is adjusted. To the extent the base rate discounts reflected in Schedule EDR are revised during the term of an EDR contract that has already been executed, the base rate discounts that were in effect when the EDR contract was executed shall apply during the term of the EDR contract.

The Settling Parties also agree that the Company has sufficiently demonstrated that EDR marginal costs exceed the cost of serving EDR customers at the time of the initial filing for purposes of compliance with the EDR statute, and that it is therefore

unnecessary to treat EDR costs and revenues separately in future ratemaking proceedings or calculate a separate EDR revenue requirement. EDR costs will be incorporated into the Company's rate case revenue requirement calculation and EDR revenue will be treated as a revenue credit to the revenue requirement (rather than included in present revenue) in a Phase I electric rate case. This provision is appropriate as it will enable all customers to benefit from the resulting reduction in the Company's overall revenue requirement.

In future Phase II electric rate cases, EDR customer counts, monthly peak demands, and total sales quantities should be excluded from the class cost allocation analysis, and EDR revenues should be treated as a revenue credit to the revenue requirement (*i.e.*, "other revenues") rather than included in present revenue calculations. This provision is appropriate as it will ensure no other customer classes are allocated additional costs as a result of EDR customers, and all customer classes will receive a benefit from the revenues collected.

The Settling Parties agree that EDR load and customer counts will also be excluded from jurisdictional allocation calculations and that EDR revenue will be treated as a revenue credit allocated between retail and wholesale customers.

The Company agrees to separately track and report any upfront construction credits/discounts administered for EDR customer off-site distribution line extensions, as well as any EDR and non-EDR customers subsequently connecting to these line extensions, for future cost recovery and allocation determinations in ratemaking proceedings. The Company will not recover these remaining construction costs from other customers prior to such future determinations being made.

Any stranded assets resulting from an EDR customer shall be deemed not used and useful from a regulatory perspective, and the Company agrees not to request base rate recovery for any such stranded assets in future ratemaking proceedings.

The Settling Parties agree the Company shall not be required to share any EDR revenues with non-EDR customers prior to consideration in a Phase I rate case Proceeding. This is appropriate given the Company agrees to bear the risk of potential stranded costs resulting from EDR customers.

**XI. Deferral of Regulatory and Legal Costs**

The Settling Parties agree that all costs prudently incurred to prepare and litigate its Application and Compliance Advice Letter(s) in this Proceeding should be allocated to future EDR customers through the EDR ECA. The Company will propose such recovery through a future cost recovery filing. The Company also agrees the rates or charges assessed to EDR customers for legal or regulatory expenses associated with this Proceeding will not be subsidized in any way by the rates or charges assessed to other, non-EDR customers, as consistent with § 40-3-104.3(6)(c)(II)(A), C.R.S.

To accomplish this, in this limited circumstance, the Settling Parties agree that the Commission should authorize the Company to track, record, and defer all costs incurred to prepare and process its Application in this Proceeding in a non-interest bearing regulatory asset account until they are presented for review and recovery in a future proceeding.

**XII. Remaining, Non-Settled Issues**

The Settling Parties do not agree on: (1) whether the Company can legally offer geographically differentiated EDR discounts within its service territory for Standard EDR Contracts; and if so, (2) the appropriate basis for determining geographical differentiation

for Standard EDR Contracts, and (3) what the appropriate geographically differentiated discount levels should be.

The Settling Parties agree that testimony filed in support of the Settlement Agreement shall be limited to testimony in support of the Settlement Agreement and shall not include testimony addressing the remaining non-settled issues (*i.e.*, other than to identify what issues remain unsettled).

### **GENERAL PROVISIONS**

1. Except as expressly set forth herein, nothing in this Settlement Agreement is intended to have precedential effect or bind the Settling Parties with respect to positions they may take in any other proceeding regarding any of the issues addressed in this Settlement Agreement. No Settling Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Settlement Agreement. Furthermore, this Settlement Agreement does not constitute agreement, by any Settling Party, that any principle or methodology contained within or used to reach this Settlement Agreement may be applied to any situation other than the above-captioned Proceeding, except as expressly set forth herein.

2. The Settling Parties agree the provisions of this Settlement Agreement, as well as the negotiation process undertaken to reach this Settlement Agreement, are just, reasonable, and consistent with and not contrary to the public interest, and should be approved and authorized by the Commission.

3. The discussions among the Settling Parties that produced this Settlement Agreement have been conducted in accordance with Rule 408 of the Colorado Rules of Evidence.

4. Nothing in this Settlement Agreement shall constitute a waiver by any Settling Party with respect to any matter not specifically addressed in this Settlement Agreement.

5. The Settling Parties agree to use good faith efforts to support all aspects of the Settlement Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Settlement Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Settlement Agreement, it will take no formal action in any administrative or judicial proceeding that would have the effect, directly or indirectly, of contravening the provisions or purposes of this Settlement Agreement. However, except as expressly provided herein, each Settling Party expressly reserves the right to advocate positions different from those stated in this Settlement Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this Settlement Agreement or its terms and conditions.

6. The Settling Parties do not believe any waiver or variance of Commission rules is required to effectuate this Settlement Agreement but agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's Rules and Regulations if necessary to permit all provisions of this Settlement Agreement to be approved, carried out, and effectuated.

7. This Settlement Agreement is an integrated agreement that may not be altered by the unilateral determination of any Settling Party. There are no terms,

representations or agreements among the parties which are not set forth in this Settlement Agreement.

8. This Settlement Agreement shall not become effective until the Commission issues a final decision addressing the Settlement Agreement. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party may withdraw from the Settlement Agreement and shall so notify the Commission and the other Settling Parties in writing within ten (10) days of the date of the Commission order. In the event a Settling Party exercises its right to withdraw from the Settlement Agreement, this Settlement Agreement shall be null and void and of no effect in this or any other proceeding.

9. There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

10. This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Agreement with respect to the issues addressed by this Settlement Agreement. This Settlement Agreement may be executed and delivered electronically and the Settling Parties agree that such electronic execution and delivery, whether executed in counterparts or collectively, shall have the same force and effect as delivery of an original document with original signatures, and that each Settling Party may use such facsimile signatures as evidence of the execution and delivery of this Settlement Agreement by the Settling Parties to the same extent that an original signature could be used.

Dated this 31st day of March, 2021.

Agreed on behalf of:

**PUBLIC SERVICE COMPANY OF COLORADO**

By: /s/ Brooke A. Trammell  
Brooke A. Trammell  
Regional Vice President,  
Rates and Regulatory Affairs  
Public Service Company of Colorado

Approved as to form:

**ATTORNEY FOR PUBLIC SERVICE COMPANY OF  
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