

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

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IN THE MATTER OF ADVICE LETTER NO.)
1889 – ELECTRIC FILED BY PUBLIC)
SERVICE COMPANY OF COLORADO TO)
REVISE ITS COLORADO P.U.C. NO. 8-)
ELECTRIC FOR APPROVAL TO)
RECOVER COSTS ASSOCIATED WITH)
JOINING THE WESTERN ENERGY)
IMBALANCE SERVICES MARKET)
OPERATED BY THE SOUTHWEST)
POWER POOL AND TO CREDIT SPP)
WEIS MARKET SALE REVENUES TO)
CUSTOMERS THROUGH THE ELECTRIC)
COMMODITY ADJUSTMENT TARIFF, TO)
BECOME EFFECTIVE JULY 15, 2022.)

PROCEEDING NO. 22AL-0270E

UNANIMOUS COMPREHENSIVE SETTLEMENT AGREEMENT

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I. INTRODUCTION AND IDENTIFICATION OF PARTIES

This Unanimous Comprehensive Settlement Agreement (“Settlement Agreement” or “Agreement”) is entered into by Public Service Company of Colorado (“Public Service” or the “Company”), Trial Staff (“Staff”) of the Colorado Public Utilities Commission, the Colorado Office of the Utility Consumer Advocate (“UCA”), the Colorado Energy Consumers (“CEC”), the Colorado Energy Office (“CEO”), Climax Molybdenum Company (“Climax”), and Western Resource Advocates (“WRA”) (collectively, the “Settling Parties”), pursuant to Rule 1408 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. This Settlement Agreement is intended to resolve all issues raised in this proceeding with respect to the Company’s Advice Letter No. 1889-Electric (“Advice Letter”), seeking to modify its electric commodity adjustment (“ECA”) tariff to allow recovery of Southwest Power Pool (“SPP”) Western Electric Imbalance Services (“WEIS”) market administration fees (“SPP WEIS”); to credit SPP WEIS market sales revenues to customers; and to allow for recovery of a standalone revenue requirement associated with the SPP WEIS entry fee and software and technology upgrades through the ECA.

II. BACKGROUND

On June 14, 2022, Public Service filed the above-captioned Advice Letter. The tariff sheet filed with the Advice Letter had an effective date of July 15, 2022.

Along with the Advice Letter and tariff sheet, Public Service also filed a Motion for Approval of Alternative Form of Notice (“Motion for Alternative Notice”), seeking authority under § 40-3-104(1)(c)(I)(E), C.R.S., to provide notice of its tariff filings to customers by publication in *The Denver Post* and its website in the form provided in Exhibit 1 to the Motion for Alternative Notice.

On June 22, 2022, the Commission granted the Motion for Alternative Notice.¹

On June 30, 2022, the Commission suspended the effective date of the tariff sheet submitted with the Advice Letter by 120 days through November 12, 2022.² At the same time, the Commission established July 29, 2022, as the deadline for interested persons and entities to file a motion to intervene in this proceeding.

On August 17, 2022, by minute entry the Commission referred this Proceeding to an Administrative Law Judge (“ALJ”) for disposition.

In addition to Public Service, the following entities are parties to this proceeding: the Staff, UCA, CEO, CEC, WRA, and Climax. Black Hills Colorado Electric, LLC (“Black Hills”) is an *amicus curiae* in this Proceeding.³

On August 29, 2022, ALJ Mirbaba ordered the parties to confer on a procedural schedule and ordered Public Service to submit a proposed consensus procedural schedule on or by September 6, 2022.⁴ As a part of that order, the ALJ identified numerous items for the parties’ conferral, and informed the parties that an evidentiary hearing must be completed by December 2, 2022, to allow sufficient time for a recommended and final Commission decision.⁵

By Decision No. C22-0529-I (issued on February 8, 2022), ALJ Mirbaba adopted a procedural schedule to govern this Proceeding. Under the procedural schedule approved by Decision No. C22-0529-I, Rebuttal Testimony and Cross-answer Testimony are due on November 7, 2022; Non-testimonial Hearing Exhibits and Prehearing Motions are due on

¹ Decision No. C22-0380-I (mailed June 22, 2022).

² Decision No. C22-0397 (mailed June 29, 2022).

³ Decision No. R22-0506-I at 8 (mailed August 29, 2022).

⁴ *Id.* at 9.

⁵ *Id.* at 5-7.

November 15, 2022; responses to Prehearing Motions are due on the November 22, 2022; Witness and Exhibit Lists and the Witness and Cross-examination Matrix are due on November 23, 2022; and a remote evidentiary hearing is scheduled for November 29 and 30, and December 1, 2022.

Consistent with the adopted procedural schedule, Staff and UCA filed Answer Testimony and exhibits on October 10, 2022. No other parties filed Answer Testimony.

Following the filing of Answer Testimony, settlement negotiations commenced on October 14, 2022. Most of the Settling Parties conducted remote settlement meetings on October 20 and 25 and on November 3, 2022. Several versions of Public Service's proposed settlement term sheet were exchanged between most of the Settling Parties and refined.

On November 4, 2022, the latest settlement term sheet revised by most of the Settling Parties was distributed to counsel for all the Settling Parties. Additional revisions were suggested by one Party on November 9, 2022, and further negotiation of the revised settlement term sheet ensued. On November 10, 2022, the Settling Parties reached agreement on a settlement in principle resolving all issues in this Proceeding.

This Settlement Agreement represents the comprehensive, negotiated agreements reached by the Settling Parties to resolve all the issues in this proceeding that were raised or that could have been raised by the Settling Parties.

III. SETTLEMENT TERMS

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

1. General Findings Regarding Public Service's Participation in the SPP WEIS

The Settling Parties agree that Public Service will join the SPP WEIS consistent with the terms and cost structure set forth in the Third Amended Western Joint Dispatch

Agreement (“Third WJDA,” provided as Attachment SPB-1 to the Direct Testimony of Steven P. Berman).⁶ The Settling Parties anticipate that joining the SPP WEIS market will enable an improved dispatch optimization (both economically and operationally), will expand the benefits to customers that are realized through the current Joint Dispatch Agreement (“JDA”), and rely on the Company’s expectation of bringing additional production cost savings to customers. At the present time and based on currently available information, the Settling Parties do not dispute that the costs associated with joining and participating in the SPP WEIS market, to be recovered through the ECA, are reasonable, and will continue to assess the reasonableness of the costs associated with participating in the SPP WEIS market through forthcoming ECA prudence reviews. The Settling Parties agree this Settlement Agreement is in the public interest.

2. Cost Recovery

2.1. Software/Information Technology Costs and One-Time Entry Fee

The Settling Parties agree that the Company’s cost recovery proposal as set forth in the Direct Testimony of Steven P. Berman⁷ should be modified to:

- 2.1.1. include the costs associated with software and information technology (“IT”) upgrades necessary to enable market participation (estimated \$6-8 million) in the Company’s next Phase I electric rate case. The Settling Parties agree these costs are eligible to be proposed for recovery in the Company’s next Phase I electric rate case, but do not take a position in this Settlement Agreement as to the prudence of these costs; and
- 2.1.2. recover the approximately \$400,000 one-time SPP WEIS entry fee through the Electric Commodity Adjustment (“ECA”) over the first year of SPP WEIS participation. The one-time entry fee will be subject to the annual ECA prudence review process.

⁶ The Company notes that a Fourth Amended and Restated Western Joint Dispatch Agreement Between Southwest Power Pool, Inc., and Public Service Company of Colorado (“Fourth Amended WJDA”) was executed on September 28, 2022, but the terms and cost structure applicable to Public Service remain unchanged.

⁷ Direct Testimony of Steven P. Berman, Hearing Exhibit 101 pp. 39-46.

2.2. Annual Administration Fee and Market Transactions

The Settling Parties further agree that subject to the annual ECA prudence review process:

- 2.2.1 the ECA tariff will be revised (as shown in Attachment JRK-1 to the Direct Testimony of Jeffrey R. Knighten) to recover the SPP annual administration fee through the ECA; and
- 2.2.2 SPP WEIS market transactions (energy purchases and sales) will be recovered through the ECA, consistent with the Direct Testimony of Steven P. Berman.⁸

3. Reporting

3.1. Annual ECA Prudence Review Reporting and Review

The Settling Parties agree that the Company will provide reporting on its SPP WEIS participation in ECA annual prudence reviews beginning with the 2023 ECA prudence review filed in 2024 and continuing for the duration of Public Service's participation in the SPP WEIS market. The Company will provide in its annual reports the following data:

- 3.1.1. Impact of SPP WEIS participation on the integration of variable resources, storage arbitrage value, and system reliability, including quantity of renewables serving load and avoided renewable curtailment, detailed on a monthly basis;
- 3.1.2. Assessment of the costs, benefits, and net economic benefits to customers of SPP WEIS participation including supporting data, documentation, and methodologies providing:
 - 3.1.2.1. Detailed monthly accounting of each cost category billed by SPP.
 - 3.1.2.2. Detailed monthly accounting of the allocation of each SPP cost category into the Company's FERC accounting.
 - 3.1.2.3. Explanation of any significant "miscellaneous adjustment" in the SPP account.
 - 3.1.2.4. Net economic gain or loss to the Company due to WEIS energy transfers on a monthly basis and the net impact to customers from those gains or losses. All customer classes receive fuel savings benefits through the ECA proportionately based on customer class allocation.
 - 3.1.2.5. Net energy imports and exports into WEIS by the Company on a monthly basis.
 - 3.1.2.6. Results of the supply adequacy evaluations conducted by SPP.

⁸ Hearing Exhibit 101, p. 46:12-15.

3.1.2.7. Report on cost savings associated with benefits SPP describes in the referenced document⁹ based on SPP's initial proposed scope and design of the WEIS including:

3.1.2.7.1. Quantification of the reduction of capacity costs to customers (Settling Parties acknowledge the high likelihood that the reduction of capacity costs to customers may be zero, based on the functions of the energy only SPP WEIS market).

3.1.2.7.2. Quantification of settled prices associated with wholesale energy purchases from participation in the WEIS by providing the monthly average Locational Marginal Pricing ("LMP") at the Public Service load node.

3.1.2.7.3. Quantification of improved efficiencies in the use of the transmission system associated with participation in the WEIS, by summarizing by month the total WEIS megawatt hours ("MWh") of purchases and sales.

3.1.3. A narrative discussion of the general overall status of the SPP WEIS market including, for example: any additional tests or reviews conducted by SPP or the SPP Market Monitoring Unit on the Company's performance in WEIS in the event such Company-specific performance tests or reviews are performed by SPP or the SPP Market Monitoring Unit; any changes or additions to market participants; any changes in cost structure; a summary of material governance processes, revisions, and/or decisions; a summary of SPP WEIS initiatives; provide a link to access available public meeting minutes, any public Market Monitoring Unit reports, and presentations; and a summary and schedule of opportunities for Commission and other Colorado stakeholders' participation.

3.2. Quarterly ECA Reporting

The Settling Parties agree the Company will work with Staff to develop informational quarterly reporting of WEIS market activity in the ECA. The Company agrees to provide informational reporting of:

3.2.1. Forecasted WEIS market energy and costs included in quarterly ECA rate calculation (e.g., Exhibits 3 and 10, or other Exhibit(s) as appropriate);

3.2.2. Actual WEIS market energy and costs (e.g., Exhibits 10 and 5, or other Exhibit(s) as appropriate) for the previous quarter;

3.2.3. A list of SPP WEIS initiatives affecting Public Service for the previous quarter and a link to any Public Service comments filed in these initiatives on the SPP website, if any; and

⁹ See

<https://spp.org/documents/60104/a%20proposal%20for%20spp's%20western%20energy%20imbalance%20service%20market.pdf>, p. 8.

- 3.2.4. A list, with title and docket number, of any FERC dockets affecting Public Service's participation in the SPP WEIS where Public Service has filed comments for the previous quarter, if any.

3.3. **Additions to ERP Annual Update Reporting**

3.3.1. **Market Participation and Performance in the WEIS.** The Company agrees to include information about the impact of SPP WEIS participation on the integration of variable resources, storage arbitrage value, and system reliability consistent with Section 3.1.1, Assessment of the costs, benefits, and net economic benefits to customers of SPP WEIS participation consistent with Section 3.1.2, and narrative discussion of the general overall status of the SPP WEIS market consistent with Section 3.1.3, above as a part of the ERP Annual Report beginning with the first ERP Annual Report following the start of Public Service's participation in the SPP WEIS (i.e., the ERP Annual Report expected to be filed March 31, 2024) and continuing for the duration of Public Service's participation in the SPP WEIS market.

3.3.2. **Carbon Dioxide Emissions.** The Settling Parties agree that as part of the emissions reporting included in the Company's annual ERP update required by the terms of paragraph 40 of the Updated Non-Unanimous Partial Settlement Agreement approved by Decision No. C22-0459 in Proceeding No. 21A-0141E, the Company will also include: (1) an estimate of the emissions impact of SPP WEIS market participation based on the SPP WEIS market generation's carbon intensity. The estimate will use the most granular carbon intensity data available (e.g., monthly average carbon intensity); and (2) a narrative update regarding progress towards systematic SPP WEIS market emissions tracking and description of any relevant methodology to the extent any such updates become available should SPP address such tracking and methodology during the duration of Public Service's participation in the SPP WEIS market. The Company further agrees to request that the SPP WEIS market operator provide monthly carbon dioxide emission data to all market participants. If the SPP determines a meaningful cost will be charged to Public Service to obtain this information, Public Service will notify the intervenors in this proceeding within 5 business days, identify SPP's assessment of the costs and present any available supporting documentation, and work with the intervenors in this proceeding to select a proceeding where presentation of cost information would be best evaluated by the Colorado Public Utilities Commission and a request for Commission approval to recover such costs would be appropriately decided.

4. **Termination Notification**

4.1. Pursuant to section 16.3.1 of the Third WJDA, if Public Service notifies SPP that it intends to withdraw from the WEIS, Public Service should provide the Commission with formal written notification within five business days of notifying SPP, with a description of the reason for withdrawing.

- 4.2. Pursuant to section 16.3.4 of the Third WJDA, if SPP notifies Public Service that it terminates Public Service Balancing Authority participation, Public Service should provide the Commission with formal written notification within fifteen business days of SPP notifying Public Service, including copy of the notification.

5. **Additional Documentation**

The Settling Parties agree the Company will provide as documentation attached to its Settlement Testimony, the following additional support and documentation:

- 5.1. A detailed analysis of the costs and benefits of joining the SPP WEIS market. At a minimum, the Company should provide additional information, including any underlying workpapers and calculations, and a brief narrative description of the information provided in the Company's supplemental response to Discovery Request CPUC1-11 and its accompanying confidential attachment (CONFIDENTIAL Attachment CPUC1-11.A1);
- 5.2. A detailed description of the WEIS market governance structure, as provided in the Company's response to Discovery Request CPUC1-4, UCA1-17, and UCA1-18;
- 5.3. An analysis of potential renewable/variable resource integration impact, as provided in the Company's response to Discovery Request CPUC3-1, CPUC3-6, CPUC3-9, and CPUC3-12 including any workpapers resulting from the Brattle Study; and
- 5.4. A brief narrative explanation, with available supporting documentation, of how the WEIS market will price transmission access and capacity.

IV. **GENERAL PROVISIONS**

1. Except as expressly set forth herein, nothing in this Settlement Agreement is intended to have precedential effect or to 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 No. 22AL-0270E, 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 they 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 modifying 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 electronic or 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 15th day of November 2022.

Agreed on behalf of:

PUBLIC SERVICE COMPANY OF COLORADO

By: /s/ Steven P. Berman

Steven P. Berman
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