

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0270E

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 SERVICE 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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
APPROVING UNANIMOUS COMPREHENSIVE
SETTLEMENT AGREEMENT, PERMANENTLY
SUSPENDING TARIFF SHEETS AND REQUIRING
COMPLIANCE FILINGS**

Mailed Date: December 20, 2022

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I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision approves the Unanimous Comprehensive Settlement Agreement (Settlement Agreement or Agreement) filed on November 15, 2022, but does not explicitly or implicitly authorize or approve the Company’s participation in the energy imbalance market at issue here or make findings that such participation is in the public interest.¹

B. Procedural History²

2. On June 14, 2022, Public Service filed Advice Letter No. 1889-Electric (Advice Letter) with proposed Tariff Sheet No. 143G (Tariff Sheets) and written testimony with attachments.

¹ In reaching this Decision, the Administrative Law Judge (ALJ) has considered and weighed all aspects of the Settlement Agreement, including aspects that are not discussed, and all evidence and arguments presented, including those discussed briefly or not at all.

² Only the procedural history necessary to understand this Decision is included.

3. On August 17, 2022, the Commission referred this proceeding to an administrative law judge (ALJ) for disposition.

4. In addition to Public Service, the following entities are parties to this Proceeding: the Office of the Utility Consumer Advocate (the UCA); Trial Staff of the Colorado Public Utilities Commission Staff's (Staff); the Colorado Energy Office (CEO); the Colorado Energy Consumers; Western Resource Advocates (WRA), and Climax Molybdenum Company.³ Black Hills Colorado Electric, LLC, doing business as Black Hills Energy (Black Hills) is an amicus curiae in this Proceeding.⁴

5. With the parties' input, on September 8, 2022, the ALJ scheduled a three-day evidentiary hearing on the Advice Letter and Tariff Sheets starting on November 29, 2022 and established numerous procedural deadlines to accommodate the hearing.⁵

6. Consistent with the approved procedural schedule, Staff and the UCA filed Answer Testimony with attachments on October 10, 2022.⁶ No other parties filed answer testimony.

7. On November 4, 2022, Public Service filed a Notice of Near Comprehensive Settlement in Principle, Unopposed Motion to Amend Procedural Schedule, and Request for Waiver of Response Time and Expedited Decision Motion (Motion to Amend). The Motion to Amend sought to vacate the November 7, 2022 deadline to file rebuttal and cross-answer testimony so that the parties could continue to focus on finalizing a comprehensive settlement agreement.

8. The ALJ granted the Motion to Amend on November 7, 2022.⁷

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

⁴ Decision No. R22-506-I at 8.

⁵ Decision No. R22-0529-I (mailed September 8, 2022).

⁶ Hearing Exhibits 300 and 500.

⁷ Decision No. R22-0694-I at 5 (mailed November 7, 2022).

9. On November 15, 2022, Public Service filed an Unopposed Motion to Approve Unanimous Comprehensive Settlement Agreement, to Amend Procedural Schedule, and Request for Waiver of Response Time and Expedited Decision (Motion), with Attachment A, the parties' fully executed Settlement Agreement. The Motion sought Commission approval of the Settlement Agreement, to vacate or modify the remaining procedural deadlines, and to vacate the first two days of the evidentiary hearing (November 29 and 30, 2022), while maintaining the December 1, 2022 hearing date for a hearing on the Settlement Agreement as needed.

10. On November 17, 2022, the ALJ partially granted the Motion by vacating or modifying the remaining procedural deadlines; vacating the first two days of hearing while maintaining December 1, 2022 for a hearing on the Settlement Agreement; and declining to rule on whether the Settlement Agreement should be approved as premature.⁸

11. On November 22, 2022, Public Service and WRA filed testimony in support of the Settlement Agreement with attachments. No other party filed similar testimony.

12. On November 29, 2022, CEO filed an Unopposed Motion to Be Excused from the December 1, 2022 Hearing (CEO's Motion). Given the proximity of this filing to the hearing date, the ALJ informally notified the parties that she intended to grant CEO's Motion during the December 1, 2022 hearing.

13. On December 1, 2022, the ALJ held the evidentiary hearing on whether the Settlement Agreement should be approved. All parties appeared. At the beginning of the hearing, the ALJ granted CEO's Motion.⁹ During the course of the hearing, the following witnesses testified in support of the Settlement Agreement: Messrs. Steven P. Berman, Nicholas J. Detmer,

⁸ Decision No. R22-0735-I at 5-6 (mailed November 17, 2022).

⁹ CEO's counsel attended the entire hearing.

and Joseph M. Pereira and Ms. Erin O’Neill. The following Hearing Exhibits and their associated attachments were admitted into evidence during the hearing: 100-108; 300; 500; 700; and 900.¹⁰

14. Consistent with the ALJ’s directions during the evidentiary hearing, Public Service filed a revised proposed ECA tariff on December 7, 2022.

15. On December 16, 2022, the parties filed a Joint Statement of Position (SOP).

II. FACTUAL FINDINGS

A. Background

16. Based on the Colorado Transmission Coordination Act of 2019, §§ 40-2.3-101 and 102, C.R.S., (2019) the Commission investigated the costs and benefits resulting from electric utility participation in energy imbalance markets, regional transmission organizations (RTOs), power pools, or joint tariffs; it concluded that such participation is generally in the public interest.¹¹ The Commission specifically found that participation in energy imbalance markets have “the potential to provide benefits that are still significant, while raising fewer concerns than RTOs.”¹²

¹⁰ Hearing Exhibit 900 is a pdf list of pre-filed exhibits that the parties indicated they may offer into evidence during the hearing. That list includes information necessary to identify the specific document to be offered, (such as the exhibit number, file date, and filing party) as it appears in the administrative record. During the hearing, most exhibits were presented, offered, and admitted into evidence electronically using the excel version of Hearing Exhibit 900 with live links to the parties’ pre-filed exhibits as they appear in the administrative record in this Proceeding. Except as noted, the exhibits listed in Hearing Exhibit 900 were admitted by administrative notice; this means that the pre-filed exhibit identified by file date and filer in Hearing Exhibit 900 (as they appear in the administrative record) were taken into evidence in lieu of receiving an identical copy during the hearing. The versions of Hearing Exhibit 105, Attachment NJD-4; Hearing Exhibit 500, Attachment ETO-5; and Hearing Exhibit 500 listed in Hearing Exhibit 900 were not admitted into evidence. Instead, revised versions of each of these exhibits that reflect compliance with the confidentiality provisions in Rule 1101(a)(I), 4 *Code of Colorado Regulations* (CCR) 723-1 were admitted and received into evidence through the parties’ box.com folders. In addition, the following exhibits that are not listed in Hearing Exhibit 900 were admitted and electronically received into evidence through the parties’ box.com folders: Hearing Exhibit 105, Attachment 16-Executable; and Hearing Exhibits 106 to 108. Administrative support staff added the exhibits that were received into evidence via the parties’ box.com folders to the administrative record on December 1, 2022.

¹¹ Decision No. C21-0755, ¶¶ 1 and 4 (mailed December 1, 2021) in Proceeding No. 19M-0495E (hereinafter Decision No. C21-0755). Decision No. C21-0755 is included in the record as Attachment JMP-2 to Hearing Exhibit 300.

¹² Hearing Exhibit 300, Attachment JMP-2 at 22.

The Commission made it clear that its determination does not extend to participation in a specific market, and that analysis of the costs, benefits, and public interest associated with participation in a specific market would be done through separate proceedings.¹³ The Commission also recognized that Colorado utilities were already joining energy imbalance markets and considering participating in RTOs, and noted that as utilities move toward greater regional integration, regulatory filings will be necessary to address issues such as tariff changes.¹⁴

17. After investigating participating in two energy imbalance markets, the Company began to pursue joining the Southwest Power Pool, Inc.'s (SPP) Western Electric Imbalance Services (WEIS) market (SPP WEIS or the market), and initiated this Proceeding by filing the Advice Letter and Tariff Sheets.¹⁵ The Advice Letter seeks to modify the Company's electric commodity adjustment (ECA) tariff to allow the Company to recover annual administration fees associated with joining the SPP WEIS; to pass through to customers the sales margins realized through SPP WEIS transactions (purchases and sales); and to allow the Company to recover a standalone revenue requirement associated with the SPP WEIS entry fee, as well as software and information technology (IT) upgrades needed to participate in the SPP WEIS.¹⁶

18. The Company does not seek Commission approval or authorization to join the SPP WEIS and believes that whether to join the market is solely within its discretion.¹⁷

¹³ *Id.* at 1 and 3. *See* Hearing Exhibit 101, 3: 9-14.

¹⁴ Hearing Exhibit 300, Attachment JMP-2 at 22. The Commission also opened a rulemaking proceeding to establish guidance on how to address and analyze concerns with market participation that were identified that Proceeding. *Id.* at 22-23. The relevant rulemaking, Proceeding No.22R-0249E, proposes rules that set requirements for utilities to follow when seeking to join an organized wholesale market, which is different from an energy imbalance market (at issue here). *See* Hearing Exhibit 300, 6: 12-22. The rulemaking proceeding is ongoing.

¹⁵ *See* Hearing Exhibit 101, 3: 3-18—4: 1-16, citing Decision No. C21-0755.

¹⁶ Hearing Exhibit 100; Hearing Exhibit 103, Attachment JRK-1; Hearing Exhibit 101, 6: 9-16.

¹⁷ Hearing Exhibit 101, 13: 4-10; Hearing Exhibit 100.

19. The SPP administers the energy imbalance market at issue here, the WEIS.¹⁸ An energy imbalance market is a real-time bulk power trading market that allows participants (power providers or purchasers) to buy, sell and dispatch unscheduled energy at the lowest possible cost to reliably serve the combined customer demand in the relevant region.¹⁹ This enables market participants with more expensive generation to benefit from purchasing lower-cost energy from other participants and for those with excess or lower-cost energy to potentially receive additional revenues from sales to market participants.²⁰ In this way, resources are optimized to serve the load within the market's geographic area. Energy imbalance markets are designed to improve power operations' efficiency and have quantifiable benefits related to avoided fuel and purchased power costs.²¹ Energy imbalance markets can also result in more efficient transmission operations through flow-based congestion management, which can reduce production costs.²² Transmission planning and resource adequacy requirements are typically not impacted by participation in energy imbalance markets.²³

20. The SPP WEIS provides service consistent with SPP's WEIS Tariff, which the Federal Energy Regulatory Commission (FERC) reviews and approves.²⁴ An entity wishing to participate in the SPP WEIS must enter into a joint dispatch agreement with the SPP to effectuate joint dispatch of generating resources among participating entities (among other things).²⁵

¹⁸ Hearing Exhibit 101, Attachment SPB-1 at 2; Hearing Exhibit 107 at 2. The SPP is an RTO. RTOS are independent electric transmission operators that provide wholesale transmission services to more than one electric services provider. Hearing Exhibit 300, Attachment JMP-2 at 5.

¹⁹ Hearing Exhibit 300, Attachment JMP-2 at 5. *See* Hearing Exhibit 101, 2: 9-12.

²⁰ Hearing Exhibit 101, 19: 13-17.

²¹ Hearing Exhibit 101, 19: 3-5.

²² Hearing Exhibit 101, 19: 8-10

²³ *See* Hearing Exhibit 101, 19: 17-20.

²⁴ Hearing Exhibit 101, Attachment SPB-1 at 1-2.

²⁵ *See generally*, Hearing Exhibit 101, Attachment SPB-1.

21. In early 2022, after lengthy negotiations, the Company and SPP executed a joint dispatch agreement, that is, the Third Amended and Restated Western Joint Dispatch Agreement (Third WJDA), for Public Service’s Balancing Area Authority (BAA) to enter the WEIS market.²⁶ The Platte River Power Authority (PRPA) and Black Hills are in Public Service’s BAA and are included in the Third WJDA.²⁷ FERC approved or accepted the Third WJDA without modifications, effective April 13, 2022 in FERC Docket No. ER22-1022-000.²⁸

22. The Company does not ask the Commission to approve the Third WJDA or its decision to enter the market.²⁹

23. The Third WJDA establishes a one-time fixed entry fee of \$500,000 for the Public Service BAA participants to join the SPP WEIS.³⁰ That amount is divided among Public Service, the PRPA, and Black Hills.³¹ Public Service’s estimated portion of the entry fee is \$398,672 (based on its native load).³² The one-time entry fee is intended to cover SPP’s incremental costs for additional staff work, system upgrades, necessary software or hardware, and other costs associated with integrating the Public Service BAA participants into the SPP WEIS.³³

24. The Third WJDA requires the Company to annually pay SPP to administer the WEIS (the WEIS Rate).³⁴ For the first year, the WEIS Rate is \$0.22 per MWh of the Company’s billable net energy load (NEL), with subsequent years at an amount set annually by WEIS

²⁶ Hearing Exhibit 101, 25: 8-14. *See* Hearing Exhibit 101, Attachment SPB-1 at 25.

²⁷ Hearing Exhibit 101, Attachment SPB-1 at 1.

²⁸ Hearing Exhibit 102, 25: 12-22. *See* December 1, 2022 Transcript (12/1/22 Tr.), 93: 3-16.

²⁹ *See* Hearing Exhibit 101, 13: 4-10; Hearing Exhibit 101, Attachment SPB-1 at 1.

³⁰ Hearing Exhibit 101, Attachment SPB-1 at 21; Hearing Exhibit 102, 21: 1-5.

³¹ Hearing Exhibit 101, Attachment SPB-1 at 21; Hearing Exhibit 102, 21: 1-5.

³² Hearing Exhibit 102, 21: 13.

³³ Hearing Exhibit 102, 21: 5-7.

³⁴ Hearing Exhibit 101, Attachment SPB-1 at 2.

consistent with other terms in the Third WJDA.³⁵ Future years' WEIS Rate will be designed to recover the costs associated with WEIS's initial and ongoing implementation.³⁶

25. The Third WJDA also requires the Company to make an annual payment (Annual Payment) to SPP that is the higher of the product of its billable NEL and the WEIS Rate, or the WEIS Participant Minimum Annual Payment.³⁷ For 2023, the Annual Payment will be prorated such that Public Service BAA participants only pay for the period of time in 2023 in which they participate in the SPP WEIS, (April 1, 2023 to December 31, 2023).³⁸

26. The Third WJDA provides Public Service BAA participants flexibility to withdraw after completing an initial two-year participation term from April 1, 2023 to April 1, 2025.³⁹ Absent withdrawal or contract termination, the Third WJDA will automatically renew for successive one-year terms.⁴⁰ This two-year participation minimum allows the Company to evaluate the cost of participating in the SPP WEIS on comparable terms with the California Independent System Operator (CAISO) Western Energy Imbalance Market (WEIM) (CASIO WEIM), and to choose another option if a viable market alternative is developed in the West during the two-year period.⁴¹ Indeed, the Company has committed to continue to study long-term solutions for joining or developing an organized wholesale market by 2030, consistent with Senate Bill (SB) 21-072's directives.⁴² The Company views joining the SPP WEIS as an incremental step in its transition to participating in an organized wholesale market, allowing it to meet its needs to

³⁵ *Id.* at 2 and 26-31.

³⁶ *Id.* at 26; 31.

³⁷ *Id.* at 26-31.

³⁸ *Id.* at 2; 3; and 22.

³⁹ *Id.* at 3.

⁴⁰ *Id.* at 3.

⁴¹ Hearing Exhibit 101, 26: 11-20.

⁴² Hearing Exhibit 104, 9: 11-14.

deliver clean, reliable, and affordable energy now while providing the flexibility to explore a more permanent market participation solution that will help it integrate more wind and solar energy onto its system.⁴³

27. Other key terms in the Third WJDA include: the Company pays no exit fee upon withdrawal after the minimum two-year term; the Company has limited exposure to embedded implementation costs if some or all existing WEIS members exit the WEIS to join the SPP RTO; and SPP will develop the functionality necessary to optimize the production cost between the SPP RTO real-time balancing market and the remaining WEIS participants in the Company's BAA (*i.e.*, multi-market optimization).⁴⁴ The Company submits that the Third WJDA reduces the Western Area Power Administration's (WAPA) voting rights in the senate voting structure of the Western Markets Executive Committee (WMEC).⁴⁵

28. On a smaller scale, the Company has been operating in an imbalance market since 2016.⁴⁶ Specifically, the Company administers the Joint Dispatch Service Agreement (JDA) entered into with the PRPA, Black Hills and Colorado Springs Utilities (CSU) (collectively, JDA Partners), which has enabled generation sharing among JDA Partners within Public Service's BAA.⁴⁷ The JDA allows the JDA Partners to coordinate operations, capture intra-hour dispatch efficiencies, and achieve energy cost efficiencies by dispatching least-cost energy among JDA Partners based on an hour system-marginal price.⁴⁸

⁴³ *Id.* at 9: 14-20.

⁴⁴ Hearing Exhibit 101, Attachment SPB-1 at 3 and 22-23. *See* Hearing Exhibit 101, 25: 15-21—26: 1-10.

⁴⁵ Hearing Exhibit 101, 26: 9-10.

⁴⁶ *See generally*, Hearing Exhibit 108 (JDA). *See* Hearing Exhibit 101, 19: 22-23—20: 1.

⁴⁷ Hearing Exhibit 104, 9: 6-9. *See generally* Hearing Exhibit 108 (JDA).

⁴⁸ *See* Hearing Exhibit 108 at 1-2 and 10. Hearing Exhibit 101, 20: 1-6; 20: 10-14.

29. With its JDA Partners, the Company explored joining an energy imbalance market with a broader geographic footprint than the JDA for several years, including the CAISO WEIM and the SPP WEIS.⁴⁹ Specifically, in 2019, the JDA Partners commissioned a joint study (the Brattle Study) to analyze how participating in a real-time energy imbalance market could lower the overall cost of serving load.⁵⁰ The Brattle Study analyzed and compared the production cost benefits for JDA Partners' to join the CAISO WEIM, among other issues studied.⁵¹ The Brattle Study found that the Company could realize an estimated market participation benefit of \$1.98 million per year (which includes an estimated \$1.24 million in production cost reduction).⁵²

30. Based on preliminary Brattle Study results and other comparative analyses, in December 2019, the Company and its JDA partners decided to participate in the CAISO WEIM rather than the SPP WEIS (which was still early in its formation).⁵³ As the JDA Partners began implementation efforts, they uncovered unanticipated new requirements that increased the costs and complexity associated with their participation in the CAISO WEIM.⁵⁴ Ultimately, CSU decided to leave the Company's BAA to join the WAPA – Colorado Missouri BAA and the SPP WEIS market.⁵⁵ Because CSU's participation in the CAISO WEIM was important to the JDA Partners' ability to realize CAISO WEIM's anticipated benefits, the remaining JDA Partners reassessed whether to join the WEIM.⁵⁶ As already noted, the Company ultimately determined that it would pursue participating in the SPP WEIS.

⁴⁹ Hearing Exhibit 101, 20: 15-19.

⁵⁰ Hearing Exhibit 101, 21: 12-15; Hearing Exhibit 105, Attachment NJD-2 (the Brattle Study).

⁵¹ Hearing Exhibit 105, Attachment NJD-2. *See* Hearing Exhibit 101, 21: 15-18.

⁵² Hearing Exhibit 105, Attachment NJD-2 at 6 (Table 1). *See* 12/1/22 Tr., 67: 25—68: 1-17.

⁵³ *See* Hearing Exhibit 101, 21: 18-20—22: 1.

⁵⁴ *Id.* at 22: 22-23—23: 1-3.

⁵⁵ *Id.* at 4: 3-16.

⁵⁶ *Id.* at 23: 4-11.

31. The Company's participation in the SPP WEIS will replace the JDA, which will be terminated as part of the transition to the SPP WEIS.⁵⁷ The remaining JDA Partners – the PRPA and Black Hills – are joining the SPP WEIS and are well aware that the JDA will be terminated when they transition to the SPP WEIS.⁵⁸

32. The Company expects that its participation in the SPP WEIS will have similar results as in the CAISO WEIM, and thus, relies, at least in part, on the results of the Brattle Study.⁵⁹ Based on the Brattle Study, the Company expects to see approximately between .33 and .5 percent in production cost savings annually.⁶⁰ The Company explains that in the SPP WEIS, it will be able to coordinate energy exchanges with entities like CSU and Tri-State Generation and Transmission Association, Inc., (Tri-State) and everyone else in the WEIS, resulting in a more diverse portfolio of assets that can participate in the market.⁶¹ The current WEIS footprint includes approximately 22,858,000 MWh of Annual Net Energy for Load in the Western Interconnection.⁶² The Company anticipates that this footprint will increase based on CSU's statement that it will move approximately 3,500,000 of MWh of Net Energy for Load to participate in the SPP WEIS.⁶³ The Company anticipates more opportunities to leverage its assets in a manner that will benefit customers (including potential increased production cost savings) due to the SPP WEIS's larger

⁵⁷ Hearing Exhibit 102, 5: 12-15; 26: 1-7.

⁵⁸ *Id.* at 26: 19-21.

⁵⁹ *See* 12/1/22 Tr., 71: 21-25—72: 1-2.

⁶⁰ *Id.* at 76: 15-25—77: 1.

⁶¹ *See id.* at 12/1/22 Tr., 75: 19-25—76: 1-4. Other SPP WEIS participants include Basin Electric Power Cooperative; Municipal Energy Agency of Nebraska; Western Area Power Administration – Colorado River Storage Project Management Center; Western Area Power Administration – Rocky Mountain Region; Western Area Power Administration – Upper Great Plains Region; Deseret Generation & Transmission Cooperative; and Black Hills Power, Inc. and Cheyenne Light, Fuel and Power Company. Hearing Exhibit 107 at 1.

⁶² Hearing Exhibit 101, 24: 22-23—25: 1.

⁶³ *Id.* at 25: 1-3.

footprint, more diverse portfolio of assets, existing transmission interconnections, and day-head and ancillary services market.⁶⁴

33. Looking just at wind curtailment based on transactions with CSU in recent years, the Company estimates that it could have avoided approximately one percent of wind curtailment had it been participating in the WEIS.⁶⁵ For example, if the Company generates additional energy based on an uptick in wind at night (wind generation), the Company could sell that excess wind generation to CSU or Tri-State, thereby displacing their more expensive thermal resources, and avoiding curtailing that energy.⁶⁶

34. The Company expects that even if it discontinues its participation in the SPP WEIS after its initial two year term, the benefits of participating will be equal to or exceed the upfront costs, due to market factors (among other reasons).⁶⁷ For example, the increase in generation costs associated with spikes in natural gas prices make buying and selling wind energy appealing, allowing the Company both to sell excess wind energy and buy wind energy itself when it is cost effective as compared to generating energy using expensive natural gas.⁶⁸

⁶⁴ See 12/1/22 Tr., 75: 19-25—76: 1-14; Hearing Exhibit 102, 7: 13-17.

⁶⁵ See 12/1/22 Tr., 77: 11-25—78: 1-4.

⁶⁶ *Id.* at 76: 5-14.

⁶⁷ See *id.* at 88: 15-25—89: 1-24.

⁶⁸ *Id.* at 88: 15-25—89: 1-24.

B. Settlement Agreement⁶⁹ and Relevant Evidence**1. General Terms**

35. The Settlement Agreement is unanimous and is intended to resolve all issues raised or that could have been raised in this Proceeding.⁷⁰ The parties agree that Public Service will join the SPP WEIS consistent with the terms and cost structure in the Third WJDA.⁷¹ They anticipate that joining the SPP WEIS market will enable improved dispatch optimization (both economically and operationally) and will expand the benefits to customers. The parties rely on the Company's expectation that its participation will create additional production cost savings for customers.⁷²

36. Based on currently available information, the parties do not dispute that the costs associated with joining and participating in the SPP WEIS market are reasonable, but they intend to continue to assess the reasonableness of such costs through forthcoming ECA prudence reviews (as discussed below).⁷³

37. The parties agree that the Settlement Agreement is in the public interest, but neither the Agreement nor the parties ask the Commission to approve the Company's participation in the SPP WEIS or make a determination that the Company's participation in that market is in the public interest.⁷⁴

38. The UCA continues to believe that the Company has not provided enough evidence to determine whether its participation in the market is in the public interest, particularly as it relates

⁶⁹ This Decision summarizes Agreement terms as necessary to understand this Decision and should not be relied upon as a comprehensive accounting of each Agreement term. The Settlement Agreement is included as Appendix A to this Decision (and is Hearing Exhibit 106).

⁷⁰ Hearing Exhibit 106 at 3; 5; 13-19.

⁷¹ *Id.* at 5-6.

⁷² *Id.* at 6.

⁷³ *Id.*

⁷⁴ *Id.* See 12/1/22 Tr., 101: 3-8; 102: 6-17; 118: 16-25—119: 1-5; and SOP at 10-11.

to the costs and benefits of market participation.⁷⁵ The Agreement addresses these concerns by deferring these bigger questions for appropriate future proceedings and requiring significant data and analyses reporting (discussed later).⁷⁶ The UCA explains that the effect of these Agreement terms are to signal to Public Service to “proceed . . . at your own risk, relative to future review.”⁷⁷

39. Similar Settlement Agreement terms alongside additional documentation that the Company provided address many of Staff’s similar concerns about the Company’s initial proposal and evidentiary showing.⁷⁸ As Staff puts it, the “costs remain at risk.”⁷⁹

2. Cost Recovery Terms

40. The Agreement provides that the Company’s cost recovery proposal in its direct testimony as to software and IT upgrade costs and the one-time entry fee should be modified as set forth in paragraph 2.1 of the Agreement but does not explicitly state that the parties agree that the modified proposed cost recovery should be approved.⁸⁰ During the hearing, the Company clarified that the parties agree that its cost recovery proposal, as modified in the Agreement, should be approved.⁸¹ No party disputed this. As such, the ALJ construes paragraph 2.1 of the Settlement Agreement as agreements that the cost recovery proposals therein should be approved.

41. The parties agree that the costs associated with software and IT upgrades necessary for the Company’s market participation (estimated to be \$6 to \$8 million) are eligible to be

⁷⁵ Hearing Exhibit 300, 8: 13-23—12: 1-18; 12/1/22 Tr., 100: 7-25—101: 1-19.

⁷⁶ See 12/1/22 Tr., 100: 7-25—101: 1-19.

⁷⁷ *Id.* at 101: 14-19.

⁷⁸ See *id.* at 114: 11-25—118: 1-11.

⁷⁹ *Id.* at 117: 14-20. See *id.* at 118: 4-7.

⁸⁰ Hearing Exhibit 106 at 6.

⁸¹ 12/1/22 Tr., 38: 3-14. Paragraph 2.1 of the Agreement also includes a citation to specific written testimony that is being modified, but this citation is not intended to incorporate the cited testimony. Hearing Exhibit 106 at 6, fn. 7. See 12/1/22 Tr., 38: 15-25—39: 1-3.

proposed for recovery in the Company's next Phase I electric rate case.⁸² The parties do not take a position on the prudence of these costs.⁸³ This reflects a change from the Company's initial request to recover these costs through the ECA and receive a standalone revenue requirement for these costs.⁸⁴ The Company submits that the system upgrades will also facilitate its participation in any organized wholesale market in the future, and that the operational experience it will gain through its SPP WEIS participation will contribute to its ability to do the same.⁸⁵

42. The Agreement provides that the Company may recover the approximately \$400,000 one-time SPP WEIS entry fee through the ECA over the first year that the Company participates in the SPP WEIS, and that the fee will be subject to the annual ECA prudence review process.⁸⁶ This is different from the Company's initial request that it receive a standalone revenue requirement associated with the entry fee.⁸⁷

43. The parties agree that the SPP WEIS annual administration fee will be recovered through the ECA.⁸⁸ They also agree that SPP WEIS market transactions (energy purchases and sales) will be recovered through the ECA with the Company passing through the sales margin revenues associated with its participation in the SPP WEIS to customers (through the ECA).⁸⁹

⁸² Hearing Exhibit 106 at 6.

⁸³ *Id.* at 6.

⁸⁴ Hearing Exhibit 101, 6: 13-16.

⁸⁵ Hearing Exhibit 102, 15: 9-11.

⁸⁶ Hearing Exhibit 106 at 6.

⁸⁷ Hearing Exhibit 101, 6: 13-16.

⁸⁸ Hearing Exhibit 106 at 7.

⁸⁹ *See Id.* at 7. The Agreement includes the above terms by stating that the energy purchases and sales will be recovered through the ECA consistent with Hearing Exhibit 101, 46: 12-15, the Direct Testimony of Steven P. Berman. Above, the ALJ summarizes the information referenced in the cited portions of Hearing Exhibit 101.

44. During the hearing, the Company confirmed that this includes any amounts earned from selling energy at a higher amount than what it cost to generate the energy.⁹⁰ Additionally, the Company confirmed that the cost of energy purchases will be passed on to customers via the ECA, and where the Company saves money by buying energy at a lower cost than to generate the energy, customers will also realize those savings (*i.e.*, an example of production cost savings).⁹¹

45. To effectuate these terms, the ECA tariff will be revised as set forth in the proposed ECA tariff filed on December 7, 2022.⁹²

46. Both Staff and the UCA believe that future separate proceedings will provide the appropriate forums to scrutinize the costs that the Company seeks to recover.⁹³ Put differently, the Agreement defers the bigger cost recovery questions to other proceedings where they can be more thoroughly vetted.⁹⁴ The reporting requirements will help the parties in this effort.⁹⁵ Staff describes the Settlement Agreement as establishing the mechanism through which the Company may seek to recover specific amounts associated with its participation in the SPP WEIS, rather than an Agreement establishing that certain amounts are recoverable.⁹⁶ As noted, Staff states that the costs that the Company will incur to participate in the SPP WEIS remain at risk.⁹⁷

⁹⁰ 12/1/22 Tr., 41: 3-14.

⁹¹ *Id.* at 41: 3-25; 43: 14-25—44: 1-3.

⁹² The Agreement provides that the ECA tariff will be revised as set forth in Hearing Exhibit 101, Attachment JRK-1, but this attachment does not accurately reflect the Settlement Agreement's terms. *See* Hearing Exhibit 106 at 6-7 and Hearing Exhibit 101, Attachment JRK-1. This was confirmed during the hearing. 12/1/22 Tr., 55: 16-26—56: 1-16. The ALJ directed the parties to file an updated ECA tariff which they agree reflects the Settlement Agreement's terms. *Id.* at 56: 17-25. Public Service's December 7, 2022 filing complies with this.

⁹³ *See* 12/1/22 Tr., 100: 19-25—101: 1-19; 117: 21-25—118: 1-11.

⁹⁴ *Id.* at 101: 9-13.

⁹⁵ *Id.* at 101: 14-19.

⁹⁶ *Id.* at 117: 21-25—118: 1-7.

⁹⁷ *Id.* at 117: 14-25—118: 1-7.

47. As already mentioned, the Company is optimistic that customer benefits will equal or exceed the costs of participation.⁹⁸ The Company also explains that a definitive and quantitative cost-benefit analysis is difficult at this stage because it is dependent on the conditions experienced during its participation.⁹⁹ For example, one real potential customer benefit is reduced or avoided renewable energy curtailments (wind units) and being able to bring that energy into the market.¹⁰⁰ As discussed above, the Company's ability to leverage wind energy through purchases and sales in the market presents opportunities for the Company to see earnings as well as savings on production costs.¹⁰¹

3. Reporting Requirements

a. Annual ECA Prudence Review Reporting

48. Under the Settlement Agreement, Public Service's ECA prudence review filings serve as the forum within which the Company will produce and file the contemplated reports on the Company's expected participation in the SPP WEIS.¹⁰² In its annual ECA report, starting with the 2023 ECA prudence review annual report filed in 2024, and continuing as long as the Company participates in the SPP WEIS, the Company will include significant additional data and analyses associated with its participation in the market.¹⁰³ Those data and analyses include but are not limited to: an assessment of the costs and benefits of the Company's participation (with documentation, methodologies, and monthly accounting); reporting on cost savings and net economic gains and losses; the results of a supply evaluation; the impact of market participation

⁹⁸ See *supra* ¶ 34.

⁹⁹ 12/1/22 Tr., 44: 11-13.

¹⁰⁰ *Id.* at 47: 12-17.

¹⁰¹ See *supra* ¶¶ 29; 32-34.

¹⁰² Hearing Exhibit 106 at 7-9.

¹⁰³ *Id.* at 7-8.

on variable resources, storage arbitrage value and system reliability (including quantity of renewable resources serving load and avoided renewable curtailment); and a narrative discussion of the general overall status of the SPP WEIS market that includes, for example, information such as reductions or additions to market participants, and a summary and schedule of opportunities for the Commission and other Colorado stakeholders' participation.¹⁰⁴ The Company's annual ECA reporting will also require it to quantify numerous items such as the reduction of capacity costs to customers; settled prices associated with wholesale purchases; and improved efficiencies in the transmission system's use.¹⁰⁵

b. ECA Quarterly Reporting Requirements

49. The Agreement requires the Company to work with Staff to develop informational quarterly reporting of WEIS market activity in the ECA.¹⁰⁶ In addition, the Company will report quarterly on: “[f]orecasted WEIS market energy and costs included in the quarterly ECA rate calculation;” actual WEIS market and energy costs for the previous quarter; lists of SPP WEIS initiatives impacting the Company for the previous quarter and any FERC dockets impacting the Company's participation in the SPP WEIS where the Company has filed comments for the previous quarter.¹⁰⁷

c. Annual ERP Reporting Requirements

50. Starting with the first ERP Annual Report after the Company begins participating the SPP WEIS, the Agreement requires the Company to include information about the impact of

¹⁰⁴ *Id.* at 7-8.

¹⁰⁵ *Id.* at 8.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 8-9.

its participation in the market on variable resources, storage arbitrage value, and system reliability; an assessment of the costs, benefits and net economic benefits to customers associated with its market participation; and a narrative discussion of the general overall status of the SPP WEIS market.¹⁰⁸ This annual ERP reporting will continue as long as the Company participates in the market.

51. In addition, the parties agree that as a part of the emissions reporting in the Company's annual ERP update required by paragraph 40 of the Updated Non-Unanimous Partial Settlement Agreement approved by Decision No. C22-0459 in Proceeding No. 21A-0141E, the Company will include an estimated emissions impact of its SPP WEIS participation based on the SPP WEIS market generation's carbon intensity, using the most granular carbon intensity data available (such as monthly average carbon intensity); and a narrative update as to progress in systemic SPP WEIS market emissions tracking, including a description of any relevant methodology.¹⁰⁹ The Company also agrees to ask the SPP WEIS market operator to provide monthly carbon dioxide emission data to all market participants; if SPP WEIS determines that this will result in a meaningful cost to Public Service, the Company will notify the intervenors in this Proceeding of such costs and related documentation within five business days (among other requirements).¹¹⁰ The parties agree that in such a circumstance, they will work together to identify a proceeding where the Commission may evaluate and determine the recovery of such costs.¹¹¹

¹⁰⁸ *Id.* at 9.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

4. Requirements if Public Service or SPP WEIS Terminates the Company's Participation

52. The Agreement provides that the Company must give the Commission formal written notice within five business days of notifying the SPP that it is withdrawing from the WEIS with a description of the reasons it is withdrawing.¹¹² Similarly, the Company must also provide the Commission formal written notice within fifteen business days of SPP's notification that it terminates Public Service's BAA participation and a copy of SPP's notice.¹¹³

5. Additional Documentation the Company Must Include in Settlement Testimony

53. The Agreement includes certain terms that Public Service was required to fulfill in its written Settlement Testimony. Specifically, the Agreement requires the Company to include: an analysis of the cost and benefits of joining the SPP WEIS, with underlying work papers and calculations; a narrative description of the information provided in a supplemental discovery response and confidential attachment; a description of the WEIS market governance structure as provided in identified discovery responses; an analysis of the potential renewable or variable resource integration impact, including workpapers resulting from the Brattle Study; and a brief narrative explanation with supporting documentation as to how the WEIS market will price transmission access and generation capacity.¹¹⁴

54. At the onset of the evidentiary hearing, the parties stipulated that the Company's settlement testimony and supporting attachments (Hearing Exhibits 104 and 105 and attachments

¹¹² *Id.*

¹¹³ *Id.* at 10.

¹¹⁴ *Id.*

thereto) comply with these Settlement Agreement terms.¹¹⁵ For example, in its settlement testimony, the Company explains that there is no cost associated with transmission access and capacity under the SPP WEIS market operations construction and governing tariff, and thus, there is no additional transmission-related costs to customers.¹¹⁶ As to the SPP WEIS governance structure, the Company explains that SPP is a stakeholder-driver organization with an independent Board of Directors providing oversight of the market's administration that uses an open, transparent, and inclusive stakeholder process as a key aspect of its governance.¹¹⁷ Stakeholders participate in the WEIS market development through the Western Markets Working Group (WMWG), the forum for SPP WEIS customers to engage in governance and strategic matters with other stakeholders.¹¹⁸ They can use this forum to make recommendations for project management and process improvements to SPP staff or the WMEC.¹¹⁹ The WMEC recommends policies, procedures and system enhancements related to the administration of the SPP WEIS.¹²⁰ Each WEIS participant has a representative on the WMEC and is able to vote on proposals.¹²¹ One commissioner from the regulatory commission of each state in which a WEIS participant has generation or load participating in the WEIS market may serve as a liaison with the WMEC; that liaison will not have voting rights, but can serve in an advisory capacity.¹²²

55. As to the potential renewable or variable resource integration impact, the Company explains that market structures such as energy imbalance markets generally support lower-cost

¹¹⁵ 12/1/22 Tr., 16: 21-25—18: 1-25.

¹¹⁶ Hearing Exhibit 104, 30: 18-22; Hearing Exhibit 105, Attachment NJD-17. *See* Hearing Exhibit 105, 20: 10-19—21: 1-13.

¹¹⁷ Hearing Exhibit 105, 14: 7-11.

¹¹⁸ *Id.* at 14: 11-15.

¹¹⁹ *See id.* at 14: 15-19.

¹²⁰ *Id.* at 14: 22-23—15: 1.

¹²¹ *Id.* at 15: 3-4.

¹²² *Id.* at 105, 15: 10-19.

integration of greater amounts of renewable energy; the larger the geographic footprint, the greater the benefits.¹²³ The SPP WEIS uses an optimization tool, Security Constrained Economic Dispatch (SCED), to determine which units to dispatch up and which ones to dispatch down.¹²⁴ Given that renewable resources have zero marginal costs, they are advantaged when the SCED performs its optimization.¹²⁵ Expanding the footprint to include uncorrelated loads and renewable resources, and other participants' dispatchable thermal resources, SCED is able to find opportunities continue to run renewable resources when historically, these would be curtailed.¹²⁶ The market can reduce curtailments through other methods, such as economic incentives that motivate participants to assess and improve their portfolio continuously.¹²⁷ For example, when there is significant renewable production, the Locational Marginal Price (price) will decline, which puts economic pressure on thermal generation to unload, thereby encouraging thermal facility operators to seek out lower minimum loads and to possibly improve offline cycling to avoid economic losses.¹²⁸ Other information relating to the Company's analysis of the impact of joining the SPP WEISS on renewable or variable resources is found in Attachment NJD-15 and 16 to Hearing Exhibit 105.

56. The Company also provided additional information relating to its cost-benefit analysis. The majority of the Company's additional cost-benefit analysis focuses on a comparison between joining the SPP WEIS as compared to joining the CAISO WEIM without CSU or simply maintaining the status quo (*i.e.*, continuing with the JDA). As mentioned, CSU's decision to join

¹²³ *Id.* at 17: 13-16.

¹²⁴ *Id.* at 17: 20-22.

¹²⁵ *Id.* at 17: 22-23—18: 1.

¹²⁶ *Id.* at 18: 4-7.

¹²⁷ *Id.* at 18: 15-17.

¹²⁸ *Id.* at 18: 10-15.

the SPP WEIS influenced the Company to join that market, as did the WEIS's geographic diversity and the Company's existing interconnections with WEIS participants, (among other reasons).¹²⁹ For example, the Company considered that the limited access to transact external to the Company's BAA would limit transactions with CAISO WEIM participants to approximately 200 MWs of imports and 30 MWs of exports.¹³⁰

6. Other General Terms

57. The Agreement includes numerous general terms, including: limiting the impact of the Settlement Agreement to this Proceeding only; that the Agreement is not a waiver as to any matter not specifically addressed therein; that the parties do not believe that a waiver or variance of any Commission rules is necessary to effectuate the Agreement, but agree to jointly apply for any waivers that are necessary; that the Agreement will not become effective until the Commission issues a final decision addressing it; and that any party may withdraw from the Agreement if the Commission modifies the Agreement in an unacceptable manner.¹³¹

58. Notably, the parties agree that the Settlement Agreement is just, reasonable, and consistent with and not contrary to the public interest and should be approved by the Commission.¹³²

¹²⁹ See *supra* ¶ 29-30; 32-34. See Hearing Exhibit 105, 10: 6-21—11: 1-15.

¹³⁰ Hearing Exhibit 105, 10: 18-21.

¹³¹ Hearing Exhibit 106 at 10-12.

¹³² *Id.* at 11.

III. RELEVANT LAW, FINDINGS, ANALYSIS, AND CONCLUSIONS

A. Relevant Law

59. Article XXV of the Colorado Constitution gives the Commission authority to regulate Public Service’s electric utility rates, services, and facilities, including those at issue here. Indeed, the Commission is charged with ensuring that utilities provide safe and reliable service to customers at just and reasonable rates.¹³³ For these reasons, the ALJ concludes that the Commission has authority over this Proceeding.

60. In considering whether to approve the Settlement Agreement, the Commission must meet its obligation to independently consider and determine matters affecting the public interest.¹³⁴

61. As the proponents of an order, the parties to the Settlement Agreement bear the burden of proof by a preponderance of the evidence that the Agreement should be approved.¹³⁵ The preponderance of the evidence standard requires “substantial evidence,” which is defined as “such relevant evidence as a reasonable [person’s] mind might accept as adequate to support a conclusion . . . it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.”¹³⁶ This standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence for a party to carry its burden.¹³⁷

¹³³ §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S.

¹³⁴ See e.g., Decision No. C12-1107 at 9 (mailed September 24, 2012) in Proceeding No. 11A-833E citing *Caldwell v. Pub. Utilis. Comm’n.*, 692 P.2d 1085, 1089 (Colo. 1984).

¹³⁵ § 24-4-105(7) C.R.S.; Rule 1500, 4 CCR 723-1.

¹³⁶ See, e.g., *City of Boulder v. Pub. Utilis. Comm’n.*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Pub. Utilis. Comm’n.*, 949 P.2d 577, 585 (Colo. 1997)).

¹³⁷ *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985).

62. The Commission encourages settlement of contested proceedings.¹³⁸

63. The ALJ assesses the Settlement Agreement with these principles and legal standards in mind.

B. Findings, Analysis, and Conclusions

64. Significantly, the Agreement reflects compromises that preserve the Commission’s ability to review costs and benefits to customers resulting from the Company’s participation in the SPP WEIS and make appropriate determinations. For example, in the Agreement, the parties agree to the ECA as the cost recovery vehicle, and that while they “do not dispute that the costs associated with joining the and participating in the SPP WEIS market are reasonable,” based on current available information, they “will continue to assess the reasonableness of such costs through forthcoming ECA prudence reviews.”¹³⁹ To facilitate this, through detailed reporting, the Company will provide significant data on the outcomes associated with its participation in the SPP WEIS, including customer benefits that are supported by factual (and not speculative) quantitative data about the actual outcomes. This has the added benefit of increasing transparency, which encourages accountability in exercising prudent judgment as to whether the Company should continue to participate in the SPP WEIS after the initial two-year term. The significant reporting requirements also well-positions the Commission to gain insight (overall) on the impact of participating in such a market.

65. What is more, given that customer benefits will, to some degree, be realized through the use and integration of renewable energy resources, which can be dependent on then-existing

¹³⁸ Rule 1408(a), 4 CCR 723-1.

¹³⁹ Hearing Exhibit 106 at 6-7.

conditions, it is difficult to definitively quantify the benefits to customers at this time, particularly without the benefit of past experience in similar markets. Given the lack of a quantitative analysis of the costs and benefits associated with market participation, and for many of the reasons in the UCA's Answer Testimony,¹⁴⁰ the ALJ agrees with the UCA that the record lacks enough evidence to decide whether the Company's participation in the SPP WEIS is in the public interest. For the same reasons, the ALJ finds that the evidence is insufficient to establish that the costs associated with joining the SPP WEIS are or will be prudently incurred.¹⁴¹ The ALJ does not view this conclusion as fatal to the Settlement Agreement because it plainly provides that recovery of market participation costs (entry fee and annual fee) are "subject to the annual ECA prudence review process."¹⁴²

66. What is more, the preponderance of the evidence establishes potential benefits associated with market participation. For example, with the larger footprint, more diverse portfolio of assets, and existing transmission interconnections, alongside day-head and ancillary services market afforded through the SPP WEIS, the Company anticipates more opportunities to leverage its assets in a manner that will benefit customers.¹⁴³ For example, the Company can leverage wind energy through purchases and sales in the market, which may result in earnings (on sales) and savings on production costs that will be passed onto customers.¹⁴⁴ Indeed, the Agreement's

¹⁴⁰ See e.g., Hearing Exhibit 300, 8: 13-23—12: 1-18.

¹⁴¹ The SOP states that "by joining the Settlement Agreement, all Settling Parties agreed that the recovery of costs associated with joining the SPP WEIS is at issue in this Proceeding, and that the recovery of those prudently incurred costs is in the public interest, in the manner presented in the Settlement Agreement." SOP at 10. This appears to narrow the scope of the assessment of the incurred costs pursuant to the Settlement Agreement's language that: the parties will continue to assess the costs in forthcoming ECA prudence reviews; and that recovery of the entry fee and annual fee are "subject to the annual ECA prudence review process." Hearing Exhibit 106 at 6-7. UCA's and Staff's testimony affirms that the costs remain at risk with respect to prudence determinations.

¹⁴² Hearing Exhibit 106 at 6-7 (¶¶ 2.1.2 and 2.2).

¹⁴³ See 12/1/22 Tr., 75: 19-25—76: 1-14; Hearing Exhibit 102, 7: 13-17.

¹⁴⁴ See *supra* ¶¶ 33-34; 44.

requirement that the Company pass along these earnings and production cost savings are critical to the ALJ's recommendation that the Agreement be approved. That same ability to leverage assets also increases the Company's ability to provide reliable service and may support the Company's transition to clean energy.¹⁴⁵ In addition, the Company anticipates that some of the Brattle Study's conclusions as to potential market participation benefits, including production cost savings, will be mirrored in the SPP WEIS market.¹⁴⁶ In particular, the Brattle Study found that the Company could realize an estimated market participation benefit of \$1.98 million per year (which includes an estimated \$1.24 million in production cost reduction).¹⁴⁷ The Company expects the results of its participation in the SPP WEIS to be similar, with approximately .33 or .5 percent production cost savings annually.¹⁴⁸

67. Other notable Agreement compromises include the Company essentially withdrawing its request to recover the software and IT upgrade costs associated with participating in the SPP WEIS through the ECA, and instead agreeing to seek recovery of such costs through its next Phase I electric rate case. This ensures that the Company's cost recovery approach for software and IT upgrades is consistent with past practice,¹⁴⁹ and does not improperly use the ECA to recover such costs.

68. The evidence reveals little about the potential impact of the Company's participation in the market on the Company's carbon emission reduction requirements, but the Company submits that it is widely known that increased integration of renewable and variable

¹⁴⁵ See Hearing Exhibit 101, 17: 16-20; 47: 11-15; Hearing Exhibit 102, 7: 13-17.

¹⁴⁶ See *supra* ¶ 29; 32.

¹⁴⁷ Hearing Exhibit 105, Attachment NJD-2 at 6 (Table 1).

¹⁴⁸ 12/1/22 Tr., 76: 15-25—77: 1.

¹⁴⁹ See Hearing Exhibit 500, 41: 8-18, quoting Attachments ETO-9 and 10.

resources through market participation may lead to carbon emission reductions.¹⁵⁰ The Company anticipates that it will use the SPP WEIS to meet between 1 and 5 percent of Colorado customers' needs (should it decide to purchase energy through the SPP WEIS).¹⁵¹ This could indicate that the emissions impact, if any, may be minor (whether positive or negative). Regardless, the Agreement's reporting requirements and other terms will help the Company and the Commission better assess this issue when actual data becomes available. And approving the Agreement does not impact any of the Company's obligations as it relates to carbon emissions.

69. The short two-year initial participation in the SPP WEIS provides the Company and Colorado customers added protection should the Company's participation in the market not meet expectations or a better option becomes available. Of course, should the Company terminate its participation after its two-year term, it runs the risk that the initial upfront costs may not exceed the benefits realized in that short period.

70. While the Agreement does not directly state that the Fourth WJDA replaces the Third WJDA for purposes of the Settlement Agreement, the Company testified that this will be the case.¹⁵² Ultimately, this makes no difference given that the terms in the Third WJDA that are relevant to the Settlement Agreement are unchanged by the Fourth WJDA.¹⁵³ Specifically, the Fourth WJDA is different in that it adds Black Hills Power, Inc., (also known as Cheyenne Light, Fuel and Power Company) as a participant and includes unique provisions relating to them.¹⁵⁴

¹⁵⁰ Hearing Exhibit 105, 19: 22-23—20: 1-9.

¹⁵¹ 12/1/22 Tr., 64: 9-25—65: 1-2.

¹⁵² 12/1/22 Tr., 35: 14-17.

¹⁵³ Compare Hearing Exhibit 101, Attachment SPB-1 to Hearing Exhibit 107. 12/1/22 Tr., 35: 17-20; Hearing Exhibit 106 at fn. 6. See Hearing Exhibit 106 at 5-6; 9-10 (Third WJDA-related terms), The Fourth WJDA was filed with FERC in October 2022; the Company expects to hear from FERC near the end of 2022. 12/1/22 Tr., 93: 17-25—94: 1.

¹⁵⁴ Hearing Exhibit 107 at 1-3; 25-28.

71. For reasons and authorities discussed, the ALJ concludes that the preponderance of the evidence establishes that the Settlement Agreement is just, reasonable, and consistent with the public interest, and should be approved. This does not amount to a finding that the Company's participation in the SPP WEIS is in the public interest, or that the costs to participate in the market are or will be prudently incurred. Nor does this Decision explicitly or implicitly authorize or approve the Company's participation in the market. Neither the Company nor the Settlement Agreement seek such authorization or approval.¹⁵⁵ And, as noted, the Company unambiguously contends that whether to join the market is solely within its discretion; the Interveners did not directly or indirectly contest this.¹⁵⁶

72. Because the original proposed Advice Letter and Tariff Sheets are inconsistent with the Settlement Agreement, they cannot be approved; as such, the ALJ will permanently suspend the Tariff Sheets. The language in the tariff sheets that the Company filed on December 7, 2022 is approved as consistent with the Settlement Agreement.

73. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this proceeding along with this written recommended decision and recommends that the Commission enter the following order.

¹⁵⁵ 12/1/22 Tr., 31: 13-20.

¹⁵⁶ Hearing Exhibit 101, 13: 4-10. *See* 12/1/22 Tr., 117: 21-25—118: 1-7.

IV. ORDER

A. The Commission Orders That:

1. The Unanimous Comprehensive Settlement Agreement (Settlement Agreement) (attached as Appendix A) filed on November 15, 2022 is approved consistent with the above discussion.

2. Public Service Company of Colorado's (Public Service or the Company) Colorado P.U.C. No. 8 – Electric tariff Sheet No. 143G filed on June 14, 2022 with Advice Letter No. 1889 is permanently suspended and may not be further amended.

3. Consistent with the above discussion, the substance of the Company's Colorado P.U.C. No. 8 – Electric tariff Sheet No. 143G filed on December 7, 2022 is approved.

4. No more than 30 days after this Recommended Decision becomes a Commission Decision, if that is the case, Public Service must file compliance advice letter and tariff sheets that are identical to the December 7, 2022 tariff sheets, but that include a different effective date, on not less than two business days' notice. The compliance filings must be made in a new advice letter proceeding and comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire before the effective date. The advice letter and tariff sheets must comply in all substantive respects to this Decision to be filed as a compliance filing on shortened notice.

5. Proceeding No. 22AL-0270E is closed.

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

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

8. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

9. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

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

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director