

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF)
COLORADO FOR AUTHORITY TO)
IMPLEMENT AN ENHANCED DEMAND) DOCKET NO. 07A-420E
SIDE MANAGEMENT PROGRAM AND)
TO REVISE ITS DEMAND-SIDE)
MANAGEMENT COST ADJUSTMENT)
MECHANISM TO INCLUDE CURRENT)
COST RECOVERY AND INCENTIVES)

STIPULATION AND SETTLEMENT AGREEMENT

I. INTRODUCTION

Public Service Company of Colorado ("Public Service" or "the Company"), the Staff of the Colorado Public Utilities Commission ("Staff"), the Colorado Office of Consumer Counsel ("OCC"), the Southwest Energy Efficiency Project ("SWEET"), and Colorado Energy Consumers ("CEC"), collectively referred to as the "Settling Parties", hereby enter into this Stipulation and Settlement Agreement ("Stipulation") resolving, as between these Parties, all issues that have been raised or could have been raised in Docket No. 07A-420E relating to the Company's Motion to Alter or Amend Decision Nos. C08-0560 and C08-0756. This Stipulation sets forth all the terms and conditions of such settlement.

The Parties to this Stipulation believe that the results of the compromises reflected herein are a just and reasonable resolution of the issues addressed in this Stipulation, and that reaching agreement as set forth herein by means of a negotiated

settlement is in the public interest. Each Party hereto pledges its support of this Stipulation and states that each will defend the settlement reached. The Parties respectfully request that the Public Utilities Commission of the State of Colorado ("Commission") approve this Stipulation.

II. BACKGROUND

On May 7, 2010, the Company filed its motion to alter or amend Decision Nos. C08-0560 and C08-0769 ("Motion"), entered in this docket on June 5, 2008 and July 24, 2008, respectively (collectively the "Final Order"). Public Service sought amendment of the Final Order in two respects: (1) increasing the incentive cap applicable to the Company's electric DSM plan beginning in 2010 to 40 percent of the Company's actual annual electric DSM expenditures and excluding the disincentive offset component from the cap and (2) authorizing the Company to file only a one-year 2011 combined gas and electric DSM plan on July 1, 2010 and to defer filing a new multi-year combined gas and electric DSM plan until July 1, 2011.

None of the respondents to PSCo's verified motion opposed PSCo's request to file a one-year plan, for 2011. However, for the reasons stated in their respective responses to the motion, all respondents opposed PSCo's request to modify the incentive cap. The Colorado PUC Staff did not respond to the motion. On June 11, 2010, the Commission issued two decisions addressing the relief requested in the Motion. In Decision No. C10-0584, the Commission granted the Company's request to file only a one-year 2011 combined gas and electric DSM plan on July 1, 2010, because none of the respondents to PSCo's verified motion opposed this request. In Decision No. C10-0585, the Commission reopened this docket, set an intervention period for any

interested party to intervene, and referred all issues relating to Company's request to modify the incentive cap to an administrative law judge ("ALJ"). On August 4, 2010, the ALJ issued Decision No. R10-0845-I establishing pre-filing deadlines and setting this case for hearing on September 23, 2010.

As relevant to the Company's Motion and this Settlement Agreement, in order to provide the Company with an opportunity for its investments in cost-effective DSM programs to be more profitable than other investments it might make, the Commission's Final Order included a package of incentives. The Commission held at ¶ 103 of Decision No. C08-0560:

We find that the Commission should establish an incentive package that provides sufficient incentive to meet the statutory requirements and signal to Public Service our expectation that it aggressively pursue all cost-effective DSM, while also tempering the incentive package so that it does not raise rates more than necessary to achieve the desired results.

Specifically, the Commission approved a \$2 million (after-tax) Disincentive Offset (\$3.2 million, before-tax), finding that DSM "should yield a positive impact on Public Service's earnings per share." See *id.* at ¶ 106. The Commission also approved a Performance Incentive intended to reward the Company with an increasing percentage of the net economic benefits achieved commencing when the Company achieves 80 percent of the Commission's established annual electric energy savings goal and continuing until it reaches 150 percent of goal. The Commission then adopted an incentive cap applicable to both the Disincentive Offset and the Performance Incentive components equal to 20 percent of the Company's actual annual DSM expenditures to be calculated on a before-tax basis.

In accordance with the Final Order, Public Service filed its application for approval of its 2009-2010 Biennial DSM Plan on or about July 1, 2008. The Commission initiated Docket No. 08A-366EG to consider the Company's proposed 2009-2010 DSM Biennial Plan. On October 28, 2009, the majority of the parties in Docket No. 08A-366EG entered into a Stipulation and Settlement Agreement ("08A-366EG Stipulation") resolving all issues that had been raised or could have been raised by the Settling Parties relating to the Company's 2009-2010 DSM Biennial Plan. The Administrative Law Judge approved the 08A-366EG Stipulation by Decision No. R08-1243 on November 28, 2008. Public Service filed its Revised 2009-2010 DSM Biennial Plan in February 2009 incorporating the changes to the Plan that had been agreed to as a part of the 08A-366EG Stipulation.

Public Service filed its first DSM Annual Status Report for 2009 on April 5, 2010. A copy of the Annual Status Report is attached as Exhibit A. As shown in the Annual Status Report, during 2009 the Company achieved electric energy savings of 220 GWh, 146 percent of the Commission approved energy savings goal of 150 GWh, and realized net economic benefits of \$214,485,612. However, because the Company's total expenditures on its electric DSM programs equaled only \$43.9 million during 2009, its total incentive award, including both the Disincentive Offset and the Performance Incentive component was capped at \$8.77 million before taxes. This compares to the incentive to which the Company would have been entitled in the absence of the cap of \$28.1 million. Of the \$8.77 million total incentive for 2009, the Performance Incentive component equaled \$5.55 million before taxes. The effect of the 20 percent incentive cap was therefore to limit the Company's Performance Incentive for 2009 to a level

equal to what it would have earned had it achieved electric energy savings of only 101 percent of the DSM goal for 2009. See, Exhibit No. TJS-2-Revised attached to the Direct Testimony and Exhibits of Timothy J. Sheesley. Thus, despite having achieved 146 percent of the approved electric energy savings goal for 2009, the Company earned no additional reward for achieved electric energy savings that exceeded 101 percent of goal.

On August 16, 2010, the Company filed its quarterly DSM report showing that as of June 30, 2010, it had not yet achieved energy savings sufficient to trigger either the Disincentive Offset or Performance Incentive component of the existing incentive mechanism. Public Service further represents that as of the date of this Stipulation, it has not yet achieved eighty percent of the 2010 energy savings goal. As such, the Settling Parties view the relief that has been agreed to in this Stipulation as being prospective.

In reaching agreement to modify the incentive cap, the Settling Parties have attempted to balance what they perceive as the Commission's two competing objectives when it first approved the incentive mechanism and incentive cap in 2008 – the first being the objective to incent the Company to strive to achieve energy savings in excess of the Commission approved goal and the other being to temper the incentive package and the associated rate impact on the Company's customers. The Settling Parties believe that the settlement they have reached balances these objectives while at the same time rectifying what may have been an unintended consequence of the 20% incentive cap, which was that the incentive cap became effective at a lower than expected level of goal attainment. The amended incentive cap that has been agreed to

by the Settling Parties is described in Paragraphs 1 and 2 below. The cap will become effective in 2010 at approximately 110% of the Commission approved energy savings goal given current spending and benefit projections. Therefore, while the Company may earn increasing levels of incentives by spending more money to achieve higher goal attainment, customers are protected because the maximum dollar amount of incentive the Company can earn is based on a known quantity.¹ The incentive cap for 2011 is expected to become effective at approximately 120 percent of the Commission approved energy savings. The 2011 incentive includes a maximum dollar amount that the Company can earn. Therefore, the Company is incented to achieve higher goal attainment while customers are protected by a dollar limit on the amount of incentive that the Company can receive. The 2011 DSM budget has not been approved at the time of this Settlement; therefore the option of tying the incentive cap to the approved 2011 budget, as was done for 2010, was not available.

By this Stipulation, the Settling Parties recommend that the Commission approve a revision to the incentive cap applicable to the Company's electric DSM programs as set forth below.

III. TERMS OF SETTLEMENT

The Settling Parties hereby stipulate and agree as follows:

1. **Direct Testimony and Exhibits.** The Settling Parties agree that the Company's Direct Testimony and Exhibits shall be admitted into evidence without cross-examination.

¹ The Stipulation approved by the Commission in Docket No. 08A-366EG provided that the Commission should initiate a prudence review automatically if the Company's total expenditures in any year exceed 115% of the total approved electric DSM portfolio budget.

2. **2010 Incentive Cap.** For 2010, once the Company achieves 80 percent of the approved energy savings goal for 2010, the Company shall be entitled to receive a Disincentive Offset equal to \$3,226,327 before taxes. The Company shall also be entitled to a Performance Incentive as provided for in Para. 112 of Decision No. C08-0560. However, the Performance component of the Company's incentive shall be subject to a cap equal to 25% of the higher of the Company's approved 2010 budget for its electric DSM portfolio (\$63,650,147) or its actual expenditures for electric DSM. One half of the disincentive offset (\$1,613,164), shall count towards the cap.

3. **2011 Incentive Cap.** For 2011, once the Company achieves 80 percent of the approved energy savings goal for 2011, the Company shall be entitled to receive a Disincentive Offset equal to \$3,226,327 before taxes. The Company shall also be entitled to a Performance Incentive as provided for in Para. 112 of Decision No. C08-0560. However, the Performance Component of the Company's incentive shall be subject to a cap equal to 25% of the higher of the Company's approved 2011 budget for its electric DSM portfolio or its actual expenditures for electric DSM. One half of the disincentive offset (\$1,613,164), shall count towards the cap. However, in no event shall the total of the Disincentive Offset and Performance Incentives exceed \$21,613,164 for 2011.

4. **Term of the Agreement.** The Settling Parties recognize that the Commission has recently initiated Docket No. 10A-554EG to consider the Company's DSM Strategic Issues Application, including its request for reevaluation and modification of the entire incentive mechanism applicable to the Company's electric DSM portfolio. The Settling Parties expect that the decisions issued in that proceeding with respect to

the incentive mechanism will govern the Company's electric DSM plans commencing January 1, 2012. Accordingly, the Settling Parties agree that this agreement shall only apply to the 2010 and 2011 DSM Plans.

IV. GENERAL PROVISIONS

The Settling Parties agree to join in a motion that requests the Commission to approve this Stipulation and to support this Stipulation.

This Stipulation is a negotiated compromise of issues raised in this proceeding relating to the Company's Motion requesting changes to the incentive cap applicable to the electric DSM portfolio during 2010 and 2011. By signing this Stipulation and by joining the motion to adopt the Stipulation filed with the Commission, the Settling Parties acknowledge that they pledge support for Commission approval and subsequent implementation of these provisions.

Nothing in this Stipulation shall bind any of the Settling Parties with respect to any position such party may take in Docket Nos. 10A-471EG or 10A-554EG or in any other proceeding before this Commission. This Stipulation shall not become effective until the issuance of a final Commission Order approving the Stipulation, which Order does not contain any modification of its terms and conditions that is unacceptable to any of the Settling Parties. In the event the Commission modifies this Stipulation in a manner unacceptable to any Party, that Party shall have the right to withdraw from this Stipulation and proceed to hearing on the issues that may be appropriately raised by that party in the reopened Docket No. 07A-420E. The withdrawing Party shall notify the Commission and the Parties to this Stipulation by e-mail within five business days of the Commission's final order modifying the Stipulation that the Party is withdrawing from the

Stipulation and that the Party is ready to proceed to hearing; the e-mail notice shall designate the precise issue or issues on which the Party desires to proceed to hearing (the "Hearing Notice").

The withdrawal of a Party shall not automatically terminate this Stipulation as to the withdrawing Party or any other Party. However, within five business days of the date of the Hearing Notice from the first withdrawing Party, all Settling Parties shall confer to arrive at a comprehensive list of issues that shall proceed to hearing and a list of issues that remain settled as a result of the first Party's withdrawal from this Stipulation. Within five business days of the date of the Hearing Notice, the Settling Parties shall file with the Commission a formal notice containing the list of issues that shall proceed to hearing and the list of issues that remain settled. The Parties who proceed to hearing shall have and be entitled to exercise all rights with respect to the issues that are heard that they would have had in the absence of this Stipulation. Hearing shall be scheduled on all of the issues designated in the formal notice filed with the Commission as soon as practicable.

The Settling Parties agree that the negotiations or discussions undertaken in conjunction with the Stipulation shall not be admissible into evidence in this or any other proceeding, except as may be necessary in any proceeding to enforce this Stipulation.

The Parties agree that approval by the Commission of this Stipulation shall constitute a determination that the Stipulation represents a just, equitable and reasonable resolution of all issues that were or could have been contested among the Settling Parties in the above-captioned proceeding. The Settling Parties believe that reaching Stipulation in this docket by means of a negotiated settlement is in the public

interest and that the results of the compromises and settlements reflected by this Stipulation are just, reasonable and in the public interest.

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

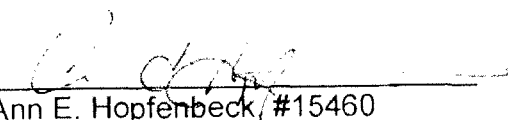
This Stipulation may be executed in counterparts, all of which when taken together shall constitute the entire agreement with respect to the issues addressed by this Stipulation.

Dated this 2nd day of September, 2010.

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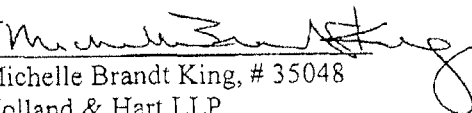
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CERTIFICATE OF SERVICE
DOCKET NO. 07A-420E REOPEN

I hereby certify that on this 2nd day of September 2010, the Stipulation and Settlement Agreement was e-filed with the Colorado Public Utilities Commission and a copy was electronically served to each of the following:

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