

**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)
APPROVAL OF ITS 2016 ELECTRIC) PROCEEDING NO. 19A-0530E
RESOURCE PLAN AMENDMENT)
REGARDING THE TARGETED 2019)
SOLAR REQUEST FOR PROPOSALS)

UNOPPOSED AND UNANIMOUS COMPREHENSIVE SETTLEMENT AGREEMENT

Introduction and Identification of Parties

Public Service Company of Colorado (“Public Service” or the “Company”), Trial Staff of the Colorado Public Utilities Commission (“Staff”), the Colorado Office of Consumer Counsel (“OCC”), and Colorado Independent Energy Association (“CIEA”), (collectively the “Settling Parties”), hereby enter into this unopposed and unanimous comprehensive Settlement Agreement (“Agreement”) to resolve all issues that have been raised in this proceeding.

Background

On September 10, 2018, the Commission issued Decision No. C18-0761 (“Phase II Decision”) in Proceeding No. 16A-0396E approving the Preferred Colorado Energy Plan Portfolio (“CEPP”) (Portfolio 6 in the Company’s 120-Day Report). Consistent with Electric Resource Planning (“ERP”) Rules, the Commission directed Public Service to pursue this cost-effective resource plan with further due diligence and contract negotiations. The table below is a reproduction of Table 9 from the Company’s 120-Day

Report summarizing the generation resources that comprise the CEPP and includes the acquisition status of those resources:

Preferred CEPP Projects Approved by Decision No. C18-0761

Bid ID	Technology	MW	Ownership	In-Service	Acquisition Status
X645	Solar w/ Storage	250/125	IPP	2022	PPA executed.
X647	Solar w/ Storage	200/100	IPP	2022	PPA executed.
X427*	Solar w/ Storage	110/50	IPP	2022	Developer unable to deliver project as bid and approved.
S430*	Solar	75	IPP	2022	Developer unable to deliver project as bid and approved.
S085	Solar	72	IPP	2022	PPA executed.
W192	Wind	500	Own	2020	Settlement / CPCN approved by Decision No. C19-0367 issued April 25, 2019.
W602	Wind	300	IPP	2020	PPA executed.
W090	Wind	169	IPP	2020	PPA executed.
W301	Wind (repower)	162	IPP	2020	PPA executed.
G215	Gas (existing)	301	Own	2022	Settlement / CPCN approved by Decision No. R20-0108 issued February 18, 2020.
G065	Gas (existing)	82	Own	2022 ¹	Settlement / CPCN approved by Decision No. R20-0108 issued February 18, 2020.

* The replacement of Bid X427 and Bid S430 is the subject of this proceeding (Proceeding No. 19A-0530).

A single developer successfully bid two solar projects into the Company’s Phase II competitive solicitation, which were included in the CEPP approved by the Commission; specifically, Bid X427 (110 MW solar and 50 MW/100 MWh of storage located in Adams County) and Bid S430 (75 MW solar located in Pueblo County) identified in the table above and referred to herein as the “original bids” or “original projects.” Consistent with the Phase II Decision, Public Service entered into contract negotiations with this developer following Commission approval of the CEPP. During power purchase agreement (“PPA”) negotiations, the bidder requested material price increases from the prices approved by the Commission, which ultimately resulted in the failure of both

¹ Pursuant to the Settlement Agreement approved in Proceeding No. 19A-0409E, the in-service date for G065 is June 1, 2020.

original bids. The replacement of these failed original bids is the subject of this Settlement Agreement.

For the two original bids relevant to this proceeding, the Company requested and the Commission granted, an extension of the 18-month deadline to execute contracts for the CEPP resources approved by the Phase II Decision as to allow additional time to: (1) conduct a targeted competitive solicitation for replacement solar and/or solar with storage project(s); (2) bring forward for Commission approval an ERP Amendment pursuant to Rule 3619; and (3) execute contracts for any approved replacement project(s) (see Decision No. C19-0623-I mailed July 24, 2019).

On July 1, 2019, the Company issued a targeted Request for Proposals (“RFP” or “2019 Solar RFP”) limited to approximately 200 MW of solar photovoltaic (“solar PV” or “solar”) only and solar PV with storage technologies. The Company conducted this targeted competitive solicitation process in an expedited manner in order to maximize the ability for replacement projects to be in-service by December 31, 2022, which was to be the in-service date of the two original projects. The Company established a proposed timeline of the activities associated with the 2019 Solar RFP and ERP Amendment.²

On September 30, 2019, Public Service filed an ERP Amendment Application in this proceeding which set forth the results of the targeted bid evaluation and requested Commission approval of the Company’s Preferred Replacement Bids. The Company’s Preferred Replacement Bids consist of two individual projects: (1) a 100 MW solar with 50 MW/200 MWh storage project located in El Paso County (Bid 056); and (2) a 113 MW

² See the Project Plan for Targeted Solar Solicitation Pursuant to Requirements of Decision No. C19-0509-I (“Project Plan”) filed by Public Service on July 1, 2019.

solar PV project located in Pueblo County (Bid 035). Through the competitive solicitation process, the Company identified Preferred Replacement Bids that closely replicate the generation technology, quantity, and environmental attributes and cost savings of the original bids. In its ERP Amendment Application, the Company also proposed and requested Commission approval of back-up bids (Bid 018 and Bid 106), which would be pursued only in the event that either or both of the selected bidders of the solar projects that comprise the Proposed Replacement Bids (Bid 056 and Bid 035) are unable to deliver the projects.

On October 1, 2019, the Commission issued a Notice of Application Filed (“Notice”) and set the intervention deadline to October 31, 2019.

On November 6, 2019, the Application was deemed complete by Minute Entry from Weekly Meeting for purposes of § 40-6-109.5, C.R.S., and was referred to an Administrative Law Judge (“ALJ”), Robert I. Garvey, for disposition.

On December 6, 2019, ALJ Garvey issued Decision No. R19-0976-I which, among other things, granted or acknowledged the interventions of Staff, OCC, and the Colorado Independent Energy Association (“CIEA”).

Staff and OCC filed Answer Testimony on February 12, 2020, and the Company filed Rebuttal Testimony addressing issues raised in Answer Testimony on March 13, 2020.

The Settling Parties thereafter commenced settlement negotiations and ultimately reached a settlement in principle. The Agreement filed here represents the comprehensive agreements of all Settling Parties to resolve the issues in this Proceeding No. 19A-0530E that were raised or could have been raised by the Settling Parties.

Settlement Terms

I. Acquisition of the Company's Preferred Replacement Bids

The Settling Parties agree that the Company should acquire the Company's Preferred Replacement Bids consisting of two individual projects: (1) a 100 MW solar with 50 MW/200 MWh storage project located in El Paso County (Bid 056); and (2) a 113 MW solar project located in Pueblo County (Bid 035). The Preferred Replacement Bids will replace two original failed bids (i.e., Bid X427, a 110 MW solar with 50 MW/100 MWh storage project located in Adams County and Bid S430, a 75 MW solar project located in Pueblo County) that were part of the CEPP approved in the Phase II Decision. The Settling Parties agree the acquisition of the Preferred Replacement Bids is in the public interest. The Settling Parties believe this is a cost-effective and beneficial approach for customers, and further support a finding that the acquisition of the Preferred Replacement Bids should have a presumption of prudence consistent with Rule 3617(d).

II. Back-Up Bids

The Settling Parties agree that in the event the Company determines through bilateral negotiations that either or both of the selected bidders of the solar projects that comprise the Preferred Replacement Bids (i.e., Bid 056 and Bid 035) are unable to deliver the projects with similar terms and conditions as bid, the Company will pursue acquisition of the Company's proposed back-up bids (i.e., Bid 018 and Bid 106). In addition, the Company will pursue Bid 077 as a back-up bid pending the established viability of this project from a transmission interconnection and delivery perspective. This investigation remains ongoing, but to the extent Bid 077 is deemed viable, the Company would also pursue this bid as a back-up option. If one of the Preferred Replacement Bids cannot be

delivered, then the Company will pursue negotiations with all “viable back-up bids” (i.e., Bid 018, Bid 106, and Bid 077) with the objective of entering into a PPA with one of the bidders. If both of the Preferred Replacement Bids cannot be delivered, then the Company will pursue negotiations with all viable back-up bids with the objective of entering into a PPA with two of the bidders. The Settling Parties further support a finding that the acquisition of any of the back-up bids should have a presumption of prudence consistent with Rule 3617(d).

A. Summary of Back-Up Bid Due Diligence

In late March 2020, the Company conducted additional due diligence for each of the three back-up bids described in Section II above (i.e., Bid 018, Bid 106, and Bid 077). The Company contacted each of the three potential back-up bidders through the established email communications protocol as prescribed in the 2019 Solar RFP. Given the passage of time since bids were offered and the recent increase in general economic uncertainty, the Company requested that bidders: (1) provide input regarding the status of their project; and (2) confirm whether they could hold their pricing consistent with their bid forms initially provided in August 2019 in response to the 2019 Solar RFP until such time that a final Commission decision is issued in this proceeding and the Company can commence PPA negotiations. The developers of Bid 018 and Bid 106, respectively, did not have any material changes to the information in their bid. The developer of Bid 077, which was not initially one of the Company’s proposed back-up bids, was contacted given the interest of parties to this proceeding in pursuing that bid as an additional potential back-up bid. In response to the Company request, the developer of Bid 077 provided updated pricing and updated energy information for its project. This updated information

is incorporated into the computer modeling results provided in Attachment A described below. If and when the Company pursues back-up bids, the viability of these bids and bid combinations will be assessed as described below.

B. Modeling Results for Back-Up Bids

The Settling Parties have included one attachment (Attachment A) as part of this Settlement Agreement in order to create a robust record in support of the circumstances around this Settlement Agreement. Attachment A shows the modeling results for back-up bids with only one of the Preferred Replacement Bids in the event of a single Preferred Replacement Bid failure as well as combinations of back-up bids in the event of a failure of both Preferred Replacement Bids. Attachment A provides a table including each bid combination and for each combination the following information: MW Solar, MW Storage, Accredited Capacity, Replacement Backfilling Method PVRR, Annuity Backfilling Method PVRR, Average Backfilling PVRR,³ and County (i.e., geographic location of the bids).

C. Viability of Back-Up Bids

The Settling Parties agree that the Company's ability to pursue any of the various bid combinations will depend on the viability of the bids at the time of PPA negotiations, including without limitation the ability of the Public Service transmission system to accommodate interconnection and delivery of bids, as well as any upgrades required, either on an individual or joint basis (i.e., some bid combinations may not be compatible with one another given transmission interconnection and delivery issues).

³ The Settling Parties do not resolve through this Settlement Agreement whether the average of the annuity and replacement backfilling methods is an appropriate metric for bid evaluation and reserve the right to take any position on this approach in future proceedings.

III. Failure of Preferred Replacement and Back-Up Bids

If neither the Preferred Replacement Bids nor any of the back-up bids are ultimately acquired, the Settling Parties agree any resulting capacity and/or energy needs of the system shall be addressed through the 2021 Electric Resource Plan process.

IV. Status Reports

The Settling Parties agree that the Company will provide a status report on negotiations with the Preferred Replacement Bids, and back-up bids as applicable, at least every sixty (60) days following a final Commission decision in this proceeding until: (1) PPAs are reached with two bidders; (2) a PPA is reached with one bidder and all other bids fail; or (3) all bids fail with the resulting capacity and/or energy needs of the system to be addressed through the 2021 Electric Resource Plan process, as discussed in Section III above. The Company will file the status report on an informational basis and make the filing in this Proceeding No. 19A-0530E. The status reports will provide an update on negotiations and the general status of projects without disclosing commercially sensitive information.

GENERAL PROVISIONS

1. This Agreement is made for settlement purposes only. No Settling Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Agreement. Furthermore, this Agreement does not constitute agreement, by any Settling Party, that any principle or methodology contained within or used to reach this Agreement may be applied to any situation other than the above-captioned proceeding, except as expressly set forth herein. No binding precedential effect or other significance, except as may be necessary to enforce this

Agreement or a Commission order concerning the Agreement, shall attach to any principle or methodology contained in or used to reach this Agreement, except as expressly set forth herein.

2. Each Settling Party understands and agrees that this Agreement represents a negotiated resolution of all issues the Settling Party either raised or could have raised in this proceeding. The Settling Parties agree this Agreement, as well as the negotiation process undertaken to reach this 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 Agreement have been conducted in accordance with Rule 408 of the Colorado Rules of Evidence ("CRE").

4. Nothing in this Agreement shall constitute a waiver by any Settling Party with respect to any matter not specifically addressed in this Agreement. In the event this Agreement becomes null and void or in the event the Commission does not approve this Agreement, this Agreement, as well as the negotiations or discussions undertaken in conjunction with this Agreement, shall remain inadmissible into evidence in these or any other proceedings in accordance with CRE 408.

5. The Settling Parties will support all aspects of this Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this

Agreement, it will take no action in any administrative or judicial proceeding, or otherwise, which would have the effect, directly or indirectly, of contravening the provisions or purposes of this Agreement. However, each Settling Party expressly reserves the right to advocate positions different from those stated in this Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this 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 Agreement, but agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's current Rules and Regulations if necessary to permit all provisions of this Agreement to be approved, carried out and effectuated.

7. This 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 Agreement (including attachments).

8. This Agreement shall not become effective until the Commission issues a final decision addressing the Agreement. In the event the Commission modifies this Agreement in a manner unacceptable to any Settling Party, that Settling Party may withdraw from the Agreement and shall so notify the Commission and the other Settling Parties in writing within ten (10) days of the date of the Commission order. In the event a Settling Party exercises its right to withdraw from the Agreement, this 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 Agreement.

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

Dated this 3rd day of April, 2020.

Agreed on behalf of:

PUBLIC SERVICE COMPANY OF COLORADO

By: /s/ Brooke A. Trammell
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Approved as to form:

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