

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

PROCEEDING NO. 19A-0225E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF  
COLORADO FOR APPROVAL OF ITS COMMUNITY RESILIENCY INITIATIVE  
PURSUANT TO § 40-2-203(4), C.R.S.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
STEVEN H. DENMAN  
APPROVING SETTLEMENT AGREEMENT  
WITHOUT MODIFICATION AND  
GRANTING VERIFIED APPLICATION**

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Mailed Date:      October 15, 2020

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**I. STATEMENT****A. Summary.**

1. This Recommended Decision grants the Unopposed Motion to Approve Settlement Agreement and Request for Waiver of Response Time (Motion to Approve Settlement Agreement), filed on May 1, 2020 by Public Service Company of Colorado (Public Service or Company); Trial Staff of the Colorado Public Utilities Commission (Staff); the Colorado Office of Consumer Counsel (OCC); Rocky Mountain Environmental Labor Coalition (RMELC) and Colorado Building and Construction Trades Council, AFL-CIO (CBCTC) (jointly, RMELC/CBCTC); and Western Resource Advocates (WRA) (collectively, the Settling Parties). This Recommended Decision also approves, without material modifications, the Unopposed and Unanimous Settlement Agreement (Settlement Agreement) filed along with the Motion to Approve Settlement Agreement.

2. By approving the Settlement Agreement, this Recommended Decision approves Public Service's proposed Community Resiliency Initiative (Initiative or CRI), which consists of seven discrete projects totaling approximately six megawatts (MW) and 15 megawatt-hours (MWh) of rate-based energy storage system projects pursuant to § 40-2-203(4), C.R.S. Additionally, the Recommended Decision orders Public Service to implement certain reporting requirements to which it agreed in the Settlement Agreement. Finally, it orders the Settling Parties to comply with the terms and conditions of the Settlement Agreement and with this Recommended Decision.

**B. Procedural History.**

3. On May 1, 2019, Public Service filed with the Colorado Public Utilities Commission (Commission), a Verified Application (Application) for Approval of the Community

Resiliency Initiative. Public Service stated that the Initiative is designed to provide up to 15 MW of Company-owned energy storage systems to enhance the safety and security of designated community resiliency centers and select infrastructure. With the Application, Public Service filed the supporting testimony and attachments of three witnesses. Public Service also sought approval of a proposed schedule by which it would file Supplemental Direct Testimony in support of the Application. Public Service explained that the Application was filed in accordance with Colorado's Energy Storage Procurement Act (House Bill (HB) 18-1270). This filing commenced the above-styled Proceeding.<sup>1</sup>

4. Public Service also stated in the Application that the benefits associated with the Initiative include: (1) improving resiliency within Colorado communities; (2) supporting Public Service's clean energy transition through the integration of distributed energy storage; (3) providing additional benefits to the grid such as system peak reduction and distribution feeder support; and (4) providing clean energy jobs to the Colorado workforce.<sup>2</sup>

5. On May 1, 2019, Public Service also filed a Motion for Leave to File the Supplemental Direct Testimony on or before December 16, 2019. Public Service stated that the Supplemental Direct Testimony would provide details on the energy storage system projects and construction partners selected through a competitive solicitation process, and regarding, to the extent practicable, information on the cost and construction details of each project proposed to be developed under the Initiative. Public Service also waived the statutory deadline in § 40-6-109.5(3), C.R.S.<sup>3</sup>

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<sup>1</sup> Application at pages 1-7. HB 18-1270 is codified at § 40-2-203(4), C.R.S. (2019).

<sup>2</sup> Application at page 4.

<sup>3</sup> Motion for Leave to File the Supplemental Direct Testimony at pages 1-3.

6. By Decision No. C19-0426-I (issued on May 16, 2019), the Commission ordered interested parties to file responses to the Motion for Leave to File Supplemental Direct Testimony within 14 days (or by May 30, 2019). No responses were filed by anyone. The Commission also acknowledged Public Service's waiver of the statutory deadline pursuant to § 40-6-109.5(3), C.R.S.

7. By Decision No. C19-0499-I (issued on June 12, 2019), the Commission granted the Motion for Leave to File Supplemental Direct Testimony and ordered Public Service to submit the Supplemental Direct Testimony no later than December 16, 2019. The Commission also ordered its Administrative Staff to issue a 30-day Notice of Application Filed (Notice) within ten days of the filing of the Supplemental Direct Testimony.

8. On December 16, 2019, Public Service filed the Supplemental Direct Testimony of two witnesses, Jack W. Ihle and Charles A. Gouin. Mr. Gouin's Corrected Supplemental Direct Testimony was filed by Public Service on December 19, 2019. The Supplemental Direct Testimony presented the seven projects (totaling approximately 6 MW) proposed as part of the Initiative and the estimated capital and annual operation and maintenance (O&M) costs for each project, as well as the total estimated capital and annual O&M costs for the Initiative.

9. On December 18, 2019, the Commission issued the Notice, which established deadlines for the filing of intervention pleadings. Interested persons were to file motions to intervene within 30 days, or no later than January 17, 2020. Staff was given seven additional days to file a notice of intervention of right. The Notice also stated that: "The Commission may,

without a hearing or further notice, determine any verified application ... which is uncontested or unopposed, if a hearing is not requested or required by law.”<sup>4</sup>

10. On January 15, 2020 WRA, through its counsel, filed a Petition for Leave to Intervene (WRA Intervention). WRA is a non-profit conservation organization whose policy interest is “to reduce the environmental impacts of the electric power industry in the Interior West” by *inter alia* “advocating for acquisition of emissions-free renewable energy generation resources” and “for a policy framework that can reduce the environmental impacts of the electric industry.”<sup>5</sup> WRA did not request an evidentiary hearing on the Application.<sup>6</sup>

11. On January 16, 2020, the RMELC and the CBCTC filed a Joint Motion for Leave to Intervene (RMELC/CBCTC Intervention). RMELC/CBCTC noted that the Application proposed that the energy storage systems will be constructed with contractors using a Project Labor Agreement with CBCTC members. RMELC/CBCTC did not request an evidentiary hearing on the Application.<sup>7</sup>

12. Public Service did not file responses opposing either the WRA Intervention or the RMELC/CBCTC Intervention.<sup>8</sup> Hence, these two interventions were unopposed.

13. On January 17, 2020, OCC filed a Notice of Intervention of Right, Entry of Appearance and Request for Hearing (OCC’s Intervention). OCC stated it requested an evidentiary hearing to determine if Public Service’s proposed Initiative is just and reasonable and

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<sup>4</sup> Notice at page 1.

<sup>5</sup> WRA Intervention at pages 1 and 2.

<sup>6</sup> WRA Intervention, at pages 4, 5, and 7 through 10.

<sup>7</sup> RMELC/CBCTC Intervention, at pages 2 through 4.

<sup>8</sup> Rule 1400(d) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, states that, “The Commission may deem a failure to file a response as a confession of the motion.”

in the public interest. OCC's Intervention identified 13 issues it may address regarding the Application.<sup>9</sup>

14. On January 23, 2020, Staff filed a Notice of Intervention as of Right by Staff, Entry of Appearance, and Notice pursuant to Rule 1007(a) and Rule 1401 (Staff's Intervention). Staff stated that it "is generally supportive of the application" and indicated its detailed review will assess the "reasonability" of the Company's benefit determinations and whether a presumption of prudence related to the Initiative is appropriate.<sup>10</sup> Staff did not request an evidentiary hearing on the Application.

15. During the Commission's weekly meeting held on January 29, 2020, the Application was deemed complete for purposes of § 40-6-109.5, C.R.S. (2019), and was referred to an Administrative Law Judge (ALJ) for disposition. This Proceeding was subsequently assigned to the undersigned ALJ.

16. Decision No. R20-0081-I (issued on February 6, 2020), acknowledged the interventions by right of OCC and Staff, pursuant to Rule 1401(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2015).<sup>11</sup> Decision No. R20-0081-I also granted the permissive interventions of WRA and RMELC/CBCTC, pursuant to Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1.

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<sup>9</sup> OCC's Intervention, ¶ 5 at pages 2 and 3.

<sup>10</sup> Staff's Intervention, ¶ 2 at pages 1 and 2.

<sup>11</sup> Amended Rules of Practice and Procedure became effective on July 30, 2020. *See* Decision No. C20-0177 (mailed on March 30, 2020) in Proceeding No. 19R-0483ALL and § 24-4-103(5), C.R.S. New rules adopted by an administrative agency are prospective. *See* § 24-4-102(15), C.R.S. Even though Public Service filed this Application on May 1, 2019, before the effective date of the new rules, there is no procedural difference between the 2015 and 2020 versions of the Rules of Practice and Procedure relied upon in this Decision. No vested rights were impaired by these procedural amendments. Therefore, this Decision applies the 2020 version of the Rules of Practice and Procedure. *See Abromeit v. Denver Career Service Bd.*, 140 P.3d 44, 50-51 (Colo. App. 2005).

17. The Parties to this Proceeding are Public Service, OCC, Staff, WRA, and RMELC/CBCTC.

18. Decision No. R20-0081-I scheduled a prehearing conference in this Proceeding for February 18, 2020 at 10:00 a.m. The Decision also directed the Parties to consult prior to the prehearing conference and encouraged them, if possible, to file a consensus procedural schedule and hearing date(s). Pursuant to the ALJ's request, on February 12, 2020, Public Service filed a Consensus Procedural Schedule, to which all the Parties agreed.

19. Decision No. R20-0100-I (issued on February 13, 2020) set an evidentiary hearing in this Proceeding for June 23, 24, and 25, 2020, commencing at 9:00 a.m., vacated the prehearing conference, and adopted the Consensus Procedural Schedule filed by Public Service.

20. Decision No. R20-0228-I (issued on April 8, 2020) granted the Unopposed Motion Requesting Extraordinary Protection of Highly Confidential Information and Request for Waiver of Response Time filed by Public Service on April 1, 2020. Decision No. R20-0228-I, as a Highly Confidential Protective Order, provided extraordinary protection for the following competitively sensitive and highly confidential documents and information associated with Public Service's 2016 Electric Resource Plan and Application for an Amendment to Public Service's 2016 Electric Resource Plan:

- a) Unit level delivered fuel costs;
- b) Hourly market price data;
- c) Unit level heat rate curves;
- d) Unit detailed maintenance schedules;
- e) Bid information of any sort (from the Company and/or from other entities);
- f) Any information protected by a confidential clause of a Purchase Power Agreement ("PPA"); and

g) Strategist files.<sup>12</sup>

21. On April 27, 2020, Public Service filed a Notice of Settlement in Principle and Unopposed Motion to Vacate Procedural Schedule and Request for Waiver of Response Time (Unopposed Motion). Public Service reported that it conferred with the Parties and that all Parties supported the Unopposed Motion.<sup>13</sup> Public Service stated that on April 23, 2020, the Parties reached a settlement in principle resolving all issues in this Proceeding. Joined by all Parties, Public Service requested that the ALJ vacate the upcoming procedural deadlines and order new procedural deadlines for filing the Settlement Agreement (May 1, 2020) and testimony in support of the Settlement Agreement (May 8, 2020). Public Service did not ask to vacate the hearing dates.<sup>14</sup>

22. Decision No. R20-0307-I (issued on April 27, 2020) granted the Unopposed Motion; waived response time; vacated the remaining deadlines in the procedural schedule; modified the date for filing written settlement agreements; vacated the evidentiary hearing on the merits set for June 24 and 25, 2020; and scheduled a hearing on the written Settlement Agreement for June 23, 2020. Decision No. R20-0307-I also ordered that the Parties file a written settlement agreement no later than May 1, 2020 and all written testimony in support of the settlement agreement no later than May 8, 2020.

23. Decision No. R20-0325-I (mailed on May 1, 2020) established guidelines and requirements for the presentation of electronic exhibits at the hearing.

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<sup>12</sup> The Highly Confidential Protective Order in Decision No. R20-0228-I included any documents referencing any of the indicated Highly Confidential Information, including testimony, discovery requests, and discovery responses (including attachments).

<sup>13</sup> Unopposed Motion, ¶ 1 at page 1.

<sup>14</sup> *Id.*, ¶¶ 3 through 7 at pages 2 and 3.



24. On May 1, 2020, joined by the Settling Parties, Public Service filed the unopposed Motion to Approve Settlement Agreement, along with the signed Settlement Agreement (Hearing Exhibit 106).

25. On May 4, 2020, Public Service filed electronic copies of its pre-filed testimony and attachments correctly numbered as hearing exhibits pursuant to the instructions in Decision No. R20-0325-I.

26. On May 8, 2020, Public Service filed the testimony of Jack W. Ihle in support of approval of the Settlement Agreement (Hearing Exhibit 107).<sup>15</sup> Also on May 8, 2020, WRA filed the testimony and attachments of Aaron Kressig in support of approval of the Settlement Agreement (Hearing Exhibit 500). On the same date, Staff filed the testimony and attachments of Mimi Xavier and Karl Kunzie in support of approval of the Settlement Agreement (Hearing Exhibits 300 and 301, respectively).

27. By Decision No. R20-0429-I (mailed on June 9, 2020), the ALJ advised the Settling Parties that he had reviewed the Settlement Agreement and all of the testimony and attachments filed in support of approval of the Settlement Agreement and, as a result, the ALJ determined that the hearing on the Settlement Agreement was not necessary. Decision No. R20-0429-I vacated the settlement hearing scheduled for June 23, 2020 at 9:00 a.m., as well as the remaining procedural deadlines. In Decision No. R20-0429-I, the ALJ then admitted into the record of this Proceeding, by administrative notice, all hearing exhibits in their electronic form as pre-filed by the Parties and existing in the Commission's E-filing System.<sup>16</sup>

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<sup>15</sup> On June 2, 2020, Public Service filed a Notice of Substitution of Witness and Adoption of Settlement Testimony, advising that Ms. Brooke A. Trammell would be substituted for Mr. Ihle and that she was adopting Mr. Ihle's testimony in support of the Settlement Agreement. No Party opposed the substitution of the witness. References to this testimony will refer to Ms. Trammell as the Public Service witness.

<sup>16</sup> Rule 1501(c) of the Rules of Practice and Procedure, 4 CCR 723-1.

28. The ALJ has reviewed all the public comments filed in this Proceeding. Of the nine public comments filed, six supported Commission approval of the Initiative. Three public comments did not specifically address the Initiative and were opposed to any rate increases.

29. This Recommended Decision will adjudicate the merits of the Settlement Agreement and the Application.

30. In rendering this Decision, the ALJ has carefully reviewed and considered all the Hearing Exhibits admitted into evidence, including the Settlement Agreement, the prefiled testimony and attachments, and the testimony in support of approval of the Settlement Agreement, even if this Decision does not specifically address all of the evidence.<sup>17</sup>

## **II. FINDINGS AND DISCUSSION**

### **A. Applicable Law.**

31. In 2018, the General Assembly enacted the Energy Storage Procurement Act (HB 18-1270, codified at § 40-2-201, *et seq.*, C.R.S.). In addition to finding it in the public interest to explore the use and procurement of energy storage systems in Colorado,<sup>18</sup> HB 18-1270 allowed investor-owned electric utilities to file applications for rate-based energy storage system projects of up to 15 MW of capacity on or before May 1, 2019.<sup>19</sup>

32. Ms. Trammell testified that HB 18-1270 explicitly codified the principle that it is in the public interest to allow investor-owned electric utilities to leverage energy storage systems

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<sup>17</sup> See *Durango Transportation, Inc. v. Colorado Public Utilities Comm'n.*, 122 P.3d 244, 252 (Colo. 2005); *RAM Broadcasting of Colo., Inc. v. Public Utilities Comm'n.*, 702 P.2d 746, 750 (Colo. 1985).

<sup>18</sup> § 40-2-201(1)(b), C.R.S.

<sup>19</sup> § 40-2-203(4), C.R.S.

to reduce system costs, support diversification of energy generation resources, and enhance grid safety and reliability.<sup>20</sup>

**B. The Settlement Agreement.**

33. As noted earlier, the Settling Parties are Public Service, OCC, Staff, WRA, and RMELC/CBCTC. In the Settlement Agreement, Hearing Exhibit 106, the Settling Parties have proposed a comprehensive settlement addressing all contested issues that have been raised, or could have been raised, in this Proceeding. The Settling Parties agree that the compromises reflected in the Settlement Agreement represent a just and reasonable resolution of the issues raised by Public Service's Application, and that reaching their agreement by means of a negotiated settlement is consistent with, and not contrary to, the public interest.<sup>21</sup>

34. The Settlement Agreement is unopposed and unanimous, and it includes no attachments. The Settlement Agreement is attached to this Decision as Appendix A.

35. Approval of the Settlement Agreement was supported by the Settlement Testimony of Public Service witness Brooke A. Trammell (Hearing Exhibit 107). Approval of the Settlement Agreement was also supported by the Settlement Testimonies of WRA witness Aaron Kressig (Hearing Exhibit 500); and Staff witnesses Mimi Xavier (Hearing Exhibit 300) and Karl Kunzie (Hearing Exhibit 301). All witnesses for the Settling Parties agreed, for various reasons discussed in their Settlement Testimonies that the Settlement Agreement is just and reasonable, in the public interest, and should be approved without modifications.

36. The Commission encourages the settlement of contested proceedings. Rule 1408 of the Rules of Practice and Procedure, 4 CCR 723-1 (2020).

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<sup>20</sup> Hearing Exhibit 107 at pages 10 and 11. See §§ 40-2-202(2), -201(b), and -201(a)(I)–(III), C.R.S.

<sup>21</sup> Unopposed Motion to Approve Settlement Agreement, at pages 1 and 2.

## 1. Approval of the Seven CRI Projects.

37. The Settling Parties agreed that, pursuant to § 40-2-203(4), C.R.S., the Commission should approve the Company's proposed Initiative, which consists of seven discrete projects totaling approximately six MW and 15 MWh of rate-based energy storage system projects pursuant to § 40-2-203(4), C.R.S. The seven projects relate to or would be developed at the following sites:

- a) The Denver International Airport Automated Guideway Transit System (DIA AGTS);
- b) The National Western Center;
- c) The Denver Rescue Mission Lawrence Street Community Center;
- d) The City of Arvada Center for the Arts and Humanities;
- e) The Town of Nederland Community Center;
- f) Summit County Middle School; and
- g) The Alamosa Family Recreation Center.<sup>22</sup>

38. **The DIA AGTS** is the primary means to move passengers between the main terminal and the Denver International Airport's (DIA) three main concourses. Even a short disruption to AGTS's electrical service can cause delays at one of the busiest airports in our nation — impacting in the process DIA's ability to continue aircraft operations, provide adequate care and services, and evacuate passengers from areas that pose dangers to health and safety. A Battery Energy Storage System (BESS) sizing of 2,000 kilowatts (kW) / 4,400 kilowatt-hours (kWh) is representative of the DIA AGTS project.<sup>23</sup>

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<sup>22</sup> Hearing Exhibit 106 at pages 3 and 4; Hearing Exhibit 107 at page 14, lines 1 – 14.

<sup>23</sup> Hearing Exhibit 107 at page 14, line 15 – page 15, line 2.

39. **The National Western Center** is a large (600,000+ square feet) multi-building and multi-purpose campus currently under construction in northeast Denver. This facility will be a host to numerous events annually, including the National Western Stock Show, which are economic drivers for the State of Colorado. In addition to hosting these regional and national events, the National Western Center is planned to be a hub for emergency management purposes — as its indoor and surrounding outdoor spaces are ideal for a variety of emergency management needs (*e.g.*, food distribution, medical services, sleeping quarters, etc.). A BESS sizing of 2,000 kW / 4,400 kWh is representative of the National Western Center project.<sup>24</sup>

40. **The Denver Rescue Mission**, located in downtown Denver, provides basic human needs such as food and shelter to some of Denver's most vulnerable residents. As part of the Denver Rescue Mission, the Lawrence Street Community Center provides a place of warm refuge and serves over 1,200 meals daily. Without such a place, over 1,000 individuals would be on the streets each day, exposed to the elements and without access to food. A BESS sizing of 250 kW / 276 kWh is representative of the Denver Rescue Mission Lawrence Street Community Center project.<sup>25</sup>

41. **The City of Arvada Center for the Arts and Humanities** is a mixed-use cultural facility which is a critical part of the City of Arvada's resiliency plan. As outlined in the City of Arvada's Disaster Recovery Plan, the Arvada Center will serve as shelter and/or a Recovery Resource Hub following a disaster (including an extended disruption of power). A BESS sizing

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<sup>24</sup> *Id.* at page 15, lines 3 – 13.

<sup>25</sup> *Id.* at page 15, line 14 – page 16, line 3.

of 1,000 kW / 3,039 kWh is representative of the Arvada Center for the Arts and Humanities project.<sup>26</sup>

42. **The Town of Nederland's Community Center** is the primary evacuation shelter for western Boulder County and along the Peak to Peak Highway. The facility can accommodate up to 1,000 residents for emergency shelter operations. A BESS sizing of 250 kW / 760 kWh is representative of the Town of Nederland Community Center project.<sup>27</sup>

43. **Summit County Middle School**, located in Frisco, Colorado, is a part of the Summit School District. The school serves 6th, 7th, and 8th grade students and is a key part of Summit County's resiliency plan, as it is designated as its emergency shelter. In addition to the local community's planning, it is frequently used as a shelter for stranded motorists during road closures on nearby Interstate-70 during adverse weather conditions. A BESS sizing of 250 kW / 1,013 kWh is representative of the Summit County Middle School project.<sup>28</sup>

44. **The Alamosa Family Recreation Center** is not only a recreation center, but also is the emergency shelter for both Alamosa County and the City of Alamosa (Alamosa). As recently as the summer of 2018, the Alamosa Family Recreation Center was used as the evacuation center for citizens forced to leave their homes due to a large fire in Alamosa. A BESS sizing of 250 kW / 760 kWh is representative of the Alamosa Family Recreation Center project.<sup>29</sup>

45. The Settlement Testimony of Public Service witness Ms. Trammell stated that resiliency centers like the seven CRI projects are vital to maintain stable community functions during and after extreme weather events and other major disruptions. She said that these existing

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<sup>26</sup> *Id.* at page 16, lines 4 – 11.

<sup>27</sup> *Id.* at page 16, lines 12 – 17.

<sup>28</sup> *Id.* at page 17, lines 1 – 8.

<sup>29</sup> *Id.* at page 17, lines 9 – 15.

facilities serve as hubs that ensure communities' access to necessities such as security, food, shelter, water, and medical care. Significantly, these resiliency centers and hubs cannot function without a stable and secure power supply. Ms. Trammell also stated that these seven CRI projects provide real public benefits by ensuring the availability of community resiliency and emergency services availability in a geographically and demographically diverse set of communities. She concluded that these CRI projects also represent a serious contribution to the continued growth and development of the battery and microgrid market in Colorado.<sup>30</sup>

46. The Settlement Testimony of Staff witness Ms. Xavier stated that the seven CRI projects fit Staff's reasonableness criteria and supported approval of the Initiative and the seven individual CRI projects.<sup>31</sup>

47. The Settlement Testimony of WRA witness Mr. Kressig stated that the Settlement Agreement resolved WRA's concerns with the Application, and Mr. Kressig recommended that the Commission approve the Settlement Agreement, which includes the seven CRI projects.<sup>32</sup>

48. Based upon substantial evidence in the record, the ALJ finds that the Initiative and the seven individual CRI projects are consistent with, and will promote the objectives of HB 18-1270. The Initiative and the seven individual CRI projects are just and reasonable and consistent with the public interest. Therefore, they will be approved.

49. Construction of these projects will utilize the use of Project Labor Agreements with CBCTC for construction of the energy storage projects selected as part of the Initiative.

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<sup>30</sup> *Id.* at page 17, line 16 – page 18, line 15.

<sup>31</sup> Hearing Exhibit 300 at page 11, lines 1 – 15.

<sup>32</sup> Hearing Exhibit 500 at page 4, lines 20 – 21; page 5, lines 9 – 12; and page 7, lines 3 – 11.

50. The Settlement Testimony of Public Service witness Ms. Trammell characterized these Project Labor Agreements as “a unique labor partnership that will support the Colorado trades workforce by providing an opportunity to further develop experience in the construction of energy storage systems here in Colorado.”<sup>33</sup>

51. The ALJ agrees and finds that the use of Project Labor Agreements with CBCTC for construction of the energy storage projects selected as part of the Initiative will be just and reasonable and consistent with the public interest.

## **2. Approval of Cost Recovery for CRI Projects.**

52. The Settling Parties agreed that the individual projects in the Initiative should have a rebuttable presumption of prudence.

53. The Settling Parties agreed that Public Service had presented detailed cost information regarding the capital, O&M, and other costs for each Company-owned energy storage system proposed to be developed pursuant to the Initiative. Therefore, the project capital costs incurred for the seven CRI projects shall be entitled to a rebuttable presumption of prudence when these projects are brought forward for recovery in a rate case or by application for recovery through an appropriate cost recovery mechanism.

54. When Public Service proposes to recover these project costs through base rates or an appropriate cost recovery mechanism, Public Service will bear the burden of going forward and shall present robust testimony with appropriate accompanying exhibits to justify the expenditures: (1) at or below the amounts set forth in Updated Table CAG-SD-3; and

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<sup>33</sup> Hearing Exhibit 107 at page 10, lines 10-14. RMELC/CBCTC will offer its expertise in developing the Project Labor Agreements.



(2) if applicable, amounts in excess of the amounts set forth in Updated Table CAG-SD-3, below.<sup>34</sup>

**UPDATED TABLE CSG-SD-3**

| Cost Category                        | Denver International Airport | National Western Center | Denver Rescue Mission | Alamosa Recreation Center | Arvada Center       | Nederland Community Center | Summit Middle School | Total Costs         |
|--------------------------------------|------------------------------|-------------------------|-----------------------|---------------------------|---------------------|----------------------------|----------------------|---------------------|
| Medium Voltage Work, site prep, etc. | \$ 1,326,000                 | \$ 1,313,000            | \$ 555,000            | \$ 970,000                | \$ 1,058,000        | \$ 945,000                 | \$ 1,006,000         | <b>\$ 7,173,000</b> |
| Battery Energy Storage System (BESS) | \$ 3,146,000                 | \$ 3,146,000            | \$ 197,000            | \$ 543,000                | \$ 2,173,000        | \$ 543,000                 | \$ 724,000           | <b>\$10,472,000</b> |
| Systems Integration                  | \$ 520,000                   | \$ 520,000              | \$ 520,000            | \$ 520,000                | \$ 520,000          | \$ 520,000                 | \$ 520,000           | <b>\$ 3,640,000</b> |
| Contingency                          | \$ 499,000                   | \$ 498,000              | \$ 127,000            | \$ 203,000                | \$ 375,000          | \$ 201,000                 | \$ 225,000           | <b>\$ 2,128,000</b> |
| <b>Total Capital Cost</b>            | <b>\$ 5,491,000</b>          | <b>\$ 5,477,000</b>     | <b>\$ 1,399,000</b>   | <b>\$ 2,236,000</b>       | <b>\$ 4,126,000</b> | <b>\$ 2,209,000</b>        | <b>\$ 2,475,000</b>  | <b>\$23,413,000</b> |
| <b>Annual O&amp;M</b>                | <b>\$ 32,000</b>             | <b>\$ 20,000</b>        | <b>\$ 20,000</b>      | <b>\$ 20,000</b>          | <b>\$ 20,000</b>    | <b>\$ 20,000</b>           | <b>\$ 20,000</b>     | <b>\$ 152,000</b>   |

55. If one or more of the seven projects is not started, then the Settling Parties agreed that the dollar value for that project(s) will not carry the rebuttable presumption of prudence, provided, however, that some capital investments and O&M expenditures are common to more than a single project. The Settling Parties are free to challenge the prudence of the capital expenditures in order to overcome the rebuttable presumption of prudence. The Settling Parties also agreed that Public Service is not seeking deferred accounting or the establishment of a regulatory asset for O&M expenses in this Proceeding.<sup>35</sup>

56. The Settlement Testimony of Staff witness Mr. Kunzie stated that, because the Settlement Agreement thoroughly defined the scope of the rebuttable presumption of prudence, and Staff agrees that the rebuttable presumption of prudence was appropriate. Mr. Kunzie recommended that the Settlement Agreement be approved and that Public Service be granted a

<sup>34</sup> Hearing Exhibit 106, Settlement Agreement, at pages 4 – 6. The Settlement Agreement also states that: “The costs in Updated Table CAG-SD-3 are not materially different than the costs in Table CAG-SD-3 provided with the Supplemental Direct Testimony of Mr. Charles A. Gouin, provided that the figures are rounded to the nearest thousand and the table separately reflects the contingency amounts, consistent with a request by the Settling Parties. *Id.*, at page 5.

<sup>35</sup> Hearing Exhibit 106, Settlement Agreement, at pages 5 and 6.

rebuttable presumption of prudence for the capital expenditures for each of the seven CRI projects as delineated in Updated Table CAG-SD-3.<sup>36</sup>

57. Based upon substantial evidence in the record, the ALJ agrees and finds that the Initiative and the seven individual CRI projects will have a presumption of prudence, consistent with the terms of the Settlement Agreement.

58. Finally, the Settling Parties agreed that no follow-on Certificates of Public Convenience and Necessity (CPCNs) are required for the individual CRI projects.<sup>37</sup> The Settlement Testimony of Public Service witness Ms. Trammell explained why the Settling Parties agreed that no follow-on CPCNs were required for each of the seven CRI projects:

With the detailed cost information provided in now Updated Table CAG-SD-3 and the requirement to provide robust testimony in support of CRI project expenditures in the future, the Settling Parties ultimately reached consensus that a rebuttable presumption of prudence should attach to CRI project costs without the need for a follow-on CPCN. The framework for future cost recovery set forth in Section II of the Settlement Agreement supports a finding that CPCN proceedings, limited-scope or otherwise, do not need to follow this proceeding in order for the rebuttable presumption of prudence to attach to the CRI project costs.<sup>38</sup>

The other witnesses who filed testimony in support of approval of the Settlement Agreement did not address the agreement that no follow-on CPCNs were required for the seven CRI projects.

59. Section 40-5-101(1)(a), C.R.S., provides that a public utility is not required to obtain a CPCN from the Commission for: (a) an extension of its facilities within any city and county, city, or town within which the public utility has already lawfully commenced operations (§ 40-5-101(1)(a)(I), C.R.S.); and (b) an extension within or to territory already

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<sup>36</sup> Hearing Exhibit 301 at page 7, lines 6–17.

<sup>37</sup> Hearing Exhibit 106, Settlement Agreement, at page 6.

<sup>38</sup> Hearing Exhibit 107 at page 24, lines 17–27.

served by the corporation, as is necessary in the ordinary course of its business (§ 40-5-101(1)(a)(III), C.R.S.). Public Service's current electric tariff on file with the Commission establishes that Public Service is authorized to provide electric utility services within the locations where the CRI projects will be located.<sup>39</sup> Moreover, based upon the Settlement Agreement and the Settlement Testimony, the seven CRI projects to which the Settling Parties have agreed are necessary in the ordinary course of Public Service's business as a Colorado electric utility. Therefore, pursuant to § 40-5-101(1)(a)(I), C.R.S., the ALJ finds that no CPCNs are required for Public Service to construct, and to extend its facilities to include, the seven CRI projects to which the Settling Parties have agreed in the Settlement Agreement.

60. Based upon substantial evidence in the record, the ALJ finds that the proposals for cost recovery for the CRI projects are just and reasonable and will be approved.

61. Based upon substantial evidence in the record and in accordance with § 40-5-101(1)(a)(I), C.R.S., the ALJ finds that the agreement that no CPCNs are required for the seven individual CRI projects, is just and reasonable and will be approved.

### **3. Reporting.**

62. The Settlement Agreement sets forth a reporting schedule detailing the timing and contents of: (1) an Initial Report; (2) a series of Semi-Annual Reports, including reporting on construction and operations; and (3) a Final Comprehensive Report, which will in part summarize the periodic reports and all entire engineering, procurement, construction, commissioning, and operational activities two years after the last project achieves commercial

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<sup>39</sup> See Public Service's COLO. PUC NO. 8 Electric Tariff, Sheet Nos. 6, 8, 9, and 10, of which the ALJ takes administrative notice in accordance with Rule 1501(c) of the Rules of Practice and Procedure, 4 CCR 723-1.

operation. The Settling Parties agreed to the following schedule for reporting on the construction and operation of the CRI projects:<sup>40</sup>

**a) Reporting Schedule**

- i. December 15, 2020 → Initial Report;
- ii. June 15, 2021 → Semi-Annual Report;
- iii. December 15, 2021 → Semi-Annual Report;
- iv. June 15, 2022 → Semi-Annual Report;
- v. December 15, 2022 → Semi-Annual Report;
- vi. June 15, 2023 → Semi-Annual Report;
- vii. December 15, 2023 → Semi-Annual Report;
- viii. April 30, 2024 → Final Comprehensive Report.<sup>41</sup>

**b) Initial Report.**

63. The Company shall file an Initial Report in this Proceeding addressing: (1) the status of all agreements executed in support of the CRI projects, including agreements with each entity hosting a CRI project; and (2) agreements with all contractors, vendors, equipment suppliers, and system integrators, for services or equipment associated with each of the CRI projects.<sup>42</sup> The Initial Report should include a status report on the Project Labor Agreements for the seven projects.<sup>43</sup>

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<sup>40</sup> Hearing Exhibit 106, Settlement Agreement, at pages 6 through 9.

<sup>41</sup> *Id.*, at pages 6 – 7.

<sup>42</sup> The Settling Parties agree that the Company may need to utilize confidential and highly confidential designations for some of these items.

<sup>43</sup> Hearing Exhibit 105, Settlement Agreement at page 18; Hearing Exhibit 104, Settlement Testimony of Jack W. Ihle at pages 28 and 29; Hearing Exhibit 101, Direct Testimony of Jack W. Ihle at pages 39 through 42.

c) **Semi-Annual Report.**

64. The Semi-Annual Reports shall contain the following two sections:

(1) a Construction Report Section; and (2) an Operations Report Section. These sections will not be required in the Initial Report or the Final Comprehensive Report.

i. **Construction Report Section**

65. The Construction Report Section of each Semi-Annual Report will provide the following information for all projects from initiating construction until the project achieves commercial operation, establishing the Commercial Operation Date:

- a) A status report update on the Project Labor Agreements for the seven projects.
- b) Major accomplishments and hurdles for each project, including a discussion of any issues causing significant departure from project plans, planned schedules or material deviations in expenditures.
- c) Project schedule, status, and milestones achieved. Milestones would include construction timelines, safety training, and in-service dates. The narrative would include a description of various developments associated with the project, noting that each of the seven projects is anticipated to be on a different timeline.
- d) An update on expenditures to date as compared to budgeted amounts for each of the seven projects. The Company anticipates that these costs may be shown publicly at a higher level of aggregation and potentially also in a confidential form with additional cost detail.

ii. **Operations Report Section**

66. The Operations Report Section of the Semi-Annual Report will include information on the following, to the extent practicable, for all projects that have achieved commercial operation:

- a) Number and duration of islanding events for each project.
- b) Battery state of charge at the time of islanding events.
- c) Use of on-site renewable and non-renewable generation during islanding events.

- d) Summary of any unplanned outages, technical failures or maintenance issues.
- e) Summary of how batteries were dispatched over the course of the year, including dispatch for arbitrage, system peak, and feeder peak (presented using a table form of arbitrage), and associated non-quantifiable benefits realized from dispatch.
- f) Summary of monetary benefits and emission reductions related to the projects to the extent such data can reasonably be isolated to the projects collectively or individually.
- g) Summary of interactions and feedback from host communities the projects are serving.
- h) Lessons learned from the operations of the CRI projects to date.

**e) Final Comprehensive Report.**

67. The Settling Parties agreed that Public Service shall file a Final Comprehensive Report summarizing the periodic reports and the entire engineering, procurement, construction, commissioning, and operational activities two years after the last project achieves commercial operation. The Final Comprehensive Report will also include a summary of lessons learned from the commercial operation to date of the projects, including how the projects and lessons learned relate to other energy storage-related initiatives in which Public Service is participating or has participated. The Final Comprehensive Report will identify preferred characteristics and purposes of microgrid projects, based on the Company's experience with the projects covered by the Settlement Agreement. Public Service shall provide a draft copy of the Final Comprehensive Report to the Settling Parties 30 days in advance of the filing date for the purpose of collecting comments prior to finalization and filing. This Final Comprehensive Report will include the results of a survey of partner customers on their perception of battery performance and microgrid project benefits and a summary of host community interactions and feedback.

68. The Settlement Testimony of Public Service witness Ms. Trammell described the detailed reporting requirements as a key aspect of the Settlement Agreement and concluded that the reporting requirements were directly consistent with the intent of HB 18-1270.<sup>44</sup>

69. The Settlement Testimony of Staff witness Ms. Xavier stated that Staff supported the reporting requirements, because the bi-annual reporting should identify project progress at key milestones, as well as the financial expenditures to date for both capital and O&M expenses relative to the estimated expenses identified in Public Service's Supplemental Testimony.<sup>45</sup>

70. Based upon substantial evidence in the record, the ALJ finds that the reporting requirements and proposed timing for reporting in the Settlement Agreement are just and reasonable and will be approved.

#### **4. Emergency Response Plans.**

71. The Settling Parties agree that, in recognition of the fact that the Commission has the duty pursuant to § 40-4-101(1), C.R.S., to ensure that the practices, equipment, and facilities of public utilities are safe, proper, and adequate, Public Service shall file within 120 days of a final decision in this Proceeding its, or if appropriate and to the extent available, that of the applicable municipality or other authority having jurisdiction, emergency response plans for each of the seven projects in the event of a leak, spill, fire, explosion, or any other threat to the safety of the general public and the safety of those that may occasionally need to access the facilities to conduct normal operation, maintenance, or emergency response activities in accordance with currently accepted engineering practices and industry standards.<sup>46</sup>

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<sup>44</sup> Hearing Exhibit 107 at page 25, line 2 – page 29, line 7.

<sup>45</sup> Hearing Exhibit 300 at page 12, line 2 – page 13, line 3.

<sup>46</sup> Hearing Exhibit 106, Settlement Agreement, at page 10.

72. The Settlement Testimony of Public Service witness Ms. Trammell stated that having solid emergency plans to address emergencies like fire, explosion, leaks, spills, and other issues at the CRI project sites, are part of Public Service's provision of clean and affordable electricity to its customers in a safe manner. The agreement to file these emergency response plans reinforces that commitment and ensures that the Commission and Settling Parties have access to emergency response plans for these seven CRI projects.<sup>47</sup>

73. The Settlement Testimony of Staff witness Ms. Xavier stated that the Emergency Response Plans are intended to conceive a level of preparedness in the event of a spill, leak, fire, explosion, or other threat to public safety in general and to those that may occasionally need access to the facilities for normal operation, maintenance, or emergency response activities in accordance with currently accepted engineering practices and industry standards.<sup>48</sup>

74. Based upon substantial evidence in the record, the ALJ finds that the requirement in the Settlement Agreement for filing emergency response plans for each of the seven CRI projects is just and reasonable and will be approved.

### **III. CONCLUSIONS**

75. The Commission has jurisdiction over the subject matter of this Proceeding and over the Parties, pursuant to §§ 40-1-103(1), 40-2-203(4), 40-6-109(1), and 40-5-101, C.R.S.

76. Response time to the Motion to Approve Settlement Agreement will be waived, pursuant to Rule 1308(c) of the Rules of Practice and Procedure, 4 CCR 723-1.

77. The Settlement Agreement is just and reasonable and consistent with the public interest.

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<sup>47</sup> Hearing Exhibit 107 at page 30, lines 2 – 17.

<sup>48</sup> Hearing Exhibit 300 at page 14, lines 13 –19.



78. The ALJ will approve the Settlement Agreement without material modifications. The Settlement Agreement is attached to this Decision as Appendix A.

79. The Application, as modified by the Settlement Agreement, is just and reasonable and consistent with the public interest. The Application, as modified by the Settlement Agreement, will be granted.

80. Public Service will be ordered to comply with the agreements, terms, and conditions in the Settlement Agreement and with this Decision.

81. The other Settling Parties will be ordered to comply with the agreements, terms, and conditions in the Settlement Agreement and with this Decision.

82. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this Proceeding, along with a written recommended decision, and the ALJ recommends that the Commission enter the following Order.

#### **IV. ORDER**

##### **A. The Commission Orders That:**

1. The Unopposed Motion to Approve Settlement Agreement and Request for Waiver of Response Time (Motion to Approve Settlement Agreement), filed on May 1, 2020 by Public Service Company of Colorado (Public Service); Trial Staff of the Colorado Public Utilities Commission; the Colorado Office of Consumer Counsel; Rocky Mountain Environmental Labor Coalition and Colorado Building and Construction Trades Council, AFL-CIO; and Western Resource Advocates (collectively, the Settling Parties), is granted consistent with the findings and discussion in this Decision.

2. Response time to the Motion to Approve Settlement Agreement is waived.

3. The Settlement Agreement filed on May 1, 2020, by Public Service and the Settling Parties, which is attached to this Decision as Appendix A, is approved without material modifications, consistent with the findings and discussion in this Decision.

4. The Verified Application for Approval of the Community Resiliency Initiative filed by Public Service on May 1, 2019, as modified by the Settlement Agreement, is granted consistent with the findings and discussion in this Decision.

5. Public Service shall comply with the agreements, terms, and conditions in the Settlement Agreement, and with this Decision.

6. The other Settling Parties shall comply with the agreements, terms, and conditions in the Settlement Agreement and with this Decision.

7. Proceeding No. 19A-0225E shall remain open for filing the reports and emergency response plans required by the Settlement Agreement, but shall otherwise be closed.

8. 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.

9. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the Parties, who may file exceptions to it.

- a. 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.
- b. 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 restriction will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Recommended 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)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

STEVEN H. DENMAN

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Administrative Law Judge