

**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 THE 500 MW)
CHEYENNE RIDGE WIND PROJECT, A)
CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY FOR)
THE CHEYENNE RIDGE WIND FARM,)
AND A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY FOR)
THE 345 KV GENERATION TIE LINE)
AND ASSOCIATED FINDINGS OF)
NOISE AND MAGNETIC FIELD)
REASONABLENESS)

PROCEEDING NO. 18A-0905E

NON-UNANIMOUS COMPREHENSIVE SETTLEMENT AGREEMENT

Introduction and Identification of Parties

Public Service Company of Colorado (“Public Service” or the “Company”), Staff of the Colorado Public Utilities Commission (“Staff”), the Office of Consumer Counsel (“OCC”), Climax Molybdenum Company (“Climax”), the Colorado Energy Office (“CEO”), Colorado Energy Consumers (“CEC”), the International Brotherhood of Electrical Workers Local No. 111 (“IBEW”), TradeWind Energy, Inc. (“TradeWind”), and Western Resource Advocates (“WRA”), (collectively the “Settling Parties”), hereby enter into this Settlement Agreement (“Agreement”) to resolve all issues that have been raised in this proceeding.

Rocky Mountain Environmental Labor Coalition and Colorado Building and Construction Trade Council (“RMELC/CBCTC”) take no position on the Agreement at

this time and reserve its right consistent with the procedural motion to respond to the Motion and Settlement Agreement based on further discussions with the Company.

Background

The Cheyenne Ridge Wind Project is one component of the Company's Preferred Colorado Energy Plan Portfolio ("Preferred CEPP") approved by the Commission in Decision No. C18-0761 in Proceeding No. 16A-0396E. The Preferred CEPP was developed in collaboration with a diverse array of stakeholders – including many of the stakeholders that are Settling Parties here. The Cheyenne Ridge Wind Project (the "Project") is located on the eastern plains of Colorado and is comprised of the approximately 500 MW Cheyenne Ridge Wind Farm and the approximately 65-mile 345 kV generation tie-line ("Gen-Tie") necessary to connect the Cheyenne Ridge Wind Farm to the Rush Creek Gen-Tie and Public Service's system.¹

On December 21, 2018, Public Service filed an Application and supporting Direct Testimony for approval of the Project, a certificate of public convenience and necessity ("CPCN") for the Cheyenne Ridge Wind Farm, a CPCN for the Gen-Tie, and associated findings of noise and magnetic field reasonableness. The Company also sought Commission approval of a proposed Customer Protection Mechanism ("CPM") and generation performance metric, as well as approval of a cost recovery proposal for the Project.

On January 3, 2019, the Commission issued Interim Decision No. C19-0008-I which served as the Notice of the Application and set the intervention deadline to January 17, 2019. On January 9, 2019, IBEW filed a Petition to Intervene and

¹ Together, the Cheyenne Ridge Wind Farm and Cheyenne Ridge Gen-Tie are referred to as the "Cheyenne Ridge Wind Project" or the "Project."

Response to Procedural Motions. On January 16, 2019, Staff filed a Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401 Request for Hearing and Response to Procedural Schedule. The following filings were submitted on January 17, 2019: RMELC/CBCTC filed a Motion to Intervene and Response to Motions, CEC filed a Petition to Intervene and Responses to Motions, WRA filed a Petition for Leave to Intervene and Response to Procedural Motions, Climax filed a Motion to Intervene, OCC filed a Notice of Intervention by Right, Entry of Appearance, and Request for Hearing, and TradeWind filed a Motion to Intervene and Entry of Appearance. On January 22, 2019, CEO filed a Motion to Intervene Out of Time and Response to Pending Motions.

On February 5, 2019, the Commission issued Decision No. C19-0139-I which, among other things, addressed and granted each motion for intervention filed in this proceeding and established a procedural schedule. Staff, OCC, CEC, and RMELC/CBCTC submitted Answer Testimony on February 22, 2019. OCC submitted Corrected Answer Testimony on March 5, 2019.

Following the submission of intervenor Answer Testimony, the Settling Parties commenced settlement negotiations on March 4, 2019 and successfully reached a settlement in principle on March 7, 2019. The Agreement filed here represents the comprehensive agreements of all Settling Parties to resolve the issues in this Proceeding No. 18A-0905E that were raised or could have been raised by the Settling Parties.

Settlement Terms

I. Overview

The Settling Parties agree that the Company's Application in this proceeding, as modified by this Agreement, is in the public interest and the Commission should grant the application as modified by this Agreement. This includes approval of two CPCNs: (1) a CPCN for the Cheyenne Ridge Wind Farm; and (2) a CPCN for the 345 kV Gen-Tie, in addition to associated findings of noise and magnetic field reasonableness. The Settling Parties further request approval of the CPM as outlined in this Agreement, the Generation Performance Metric, and the overall cost recovery proposal associated with the Cheyenne Ridge Wind Project.

II. General Tenets for Cheyenne Ridge Wind Project Cost Recovery

A. Point Cost for the Capital Costs

The Settling Parties agree that the point cost for capital costs establishing a presumption of prudence in this proceeding for the Project will be \$743 million, inclusive of Allowance for Funds Used During Construction ("AFUDC").² Public Service will bring forward the actual point cost for evaluation in the first electric base rate proceeding following the commercial operation of the Project. The Company will bear the burden to establish that extraordinary circumstances warrant recovery of any costs, including AFUDC, above the \$743 million point cost. For purposes of this proceeding, "extraordinary circumstances" refer to circumstances that were not known and could not reasonably have been known by the utility when it developed its proposal, consistent

² This point cost amount includes the capital cost associated with the Cheyenne Ridge Gen-Tie; however, as explained further in Section (IV)(C), it does not include costs related to voltage performance, transient stability, interconnection studies, or additional costs that may result from the findings of these studies. This information will be provided in subsequent filings with the Commission for additional transmission investment related to the Preferred CEPP.

with previous Commission decisions addressing “extraordinary circumstances” in the point cost for capital costs context.³

B. Production Tax Credit Treatment

The Settling Parties agree that the production tax credits (“PTCs”) related to the actual output generated by the Project will be passed to customers through the Electric Commodity Adjustment (“ECA”) as generated by the Project.

C. Customer Insulation from PTC Risk

The Settling Parties agree that Public Service will credit customers with 100 percent of the PTC based on the actual output generated by the entire Project, at the federal PTC level in effect at the time they are generated. Public Service is not guaranteeing against any reduction in value Congress assigns to the PTCs for income tax purposes or any elimination by Congress of the PTCs.

D. Deferred Tax Asset Annual Cap

The Settling Parties agree that for purposes of cost recovery and evaluation related to the Project, Public Service will lock the deferred tax asset (“DTA”) carrying costs associated with the Project consistent with the annual amounts shown in Highly Confidential Settlement Exhibit A.⁴ In any year that there is a DTA, the Company will not recover more than the lower of (i) the DTA Annual Cap amount reflected in Highly Confidential Settlement Exhibit A or (ii) the actual DTA carrying cost amount. To the extent the DTA carrying cost amount is less than the DTA Annual Cap amount in a given year, there will be no carryforward to subsequent years for this difference.

³ See Decision No. C09-0184, at ¶ 70, Proceeding No. 08A-0436E (mailed Feb. 24, 2009); see also Decision No. C08-1153, at ¶ 67, Proceeding No. 07A-447E (mailed Nov. 7, 2008) (“[W]e clarify that ‘extraordinary circumstances’ means circumstances that were not known and could not reasonably have been known by the utility when it submitted a generation proposal.”)

⁴ Highly Confidential Settlement Exhibit A will also accompany annual reports and a sample version of the exhibit is included with this Agreement.

E. Customer Protection Mechanism Standard

The Settling Parties agree that the CPM Standard set in this proceeding is \$20.61/MWh. The CPM Standard incorporates the return on equity of 9.83 percent, capital structure of 56 percent equity and 44 percent long-term debt, and debt costs as modeled in the 2016 Electric Resource Plan (“ERP”), along with the 6.78 percent discount rate approved in Phase I of the 2016 ERP.

F. Customer Protection Mechanism Measure

The Settling Parties agree that the CPM Measure represents the cumulative \$/MWh on a net present value basis back to 2016 consistent with the 2016 ERP modeling. The CPM Measure will be modeled using the revenue requirement model provided as Attachment SPB-1 to the Direct Testimony of Steven P. Berman reflecting the present value full cost of the Cheyenne Ridge Gen-Tie over its 66-year life.⁵

III. Customer Protection Mechanism Reporting and Evaluation

The Settling Parties agree that the Commission should approve the CPM reporting and evaluation approach described in this section. The CPM reporting and evaluation processes are designed to incorporate and utilize the General Tenets for Cheyenne Ridge Wind Project Cost Recovery described above. Moreover, the CPM reporting and evaluation approach uses the Timeframe 1, Timeframe 2, and Timeframe 3 cost recovery proposal nomenclature utilized in the Direct Testimony of Brooke A. Trammell in this proceeding.⁶

The Settling Parties also agree that the Timeframe 1, Timeframe 2, and Timeframe 3 cost recovery approach is in the public interest and thus should be

⁵ The adjustment made to reflect the present value full cost of the Cheyenne Ridge Gen-Tie is shown in Highly Confidential Settlement Exhibit A.

⁶ See Direct Testimony of Brooke A. Trammell, at 52:1 - 66:21 (filed Dec. 21, 2018).

approved by the Commission. In this section, the different cost recovery approaches in Timeframe 2 and Timeframe 3 are explained in more detail, along with the separate CPM evaluation frameworks that apply to the Project during these respective Timeframes.

A. Timeframe 1

Timeframe 1 covers the time from approval of the Project by the Commission to the commercial operation of the Project.⁷

i. Timeframe 1 Quarterly Reporting

The Settling Parties agree that, similar to reporting regarding the Rush Creek Wind Project approved in consolidated Proceeding No. 16A-0117E and Proceeding No. 16V-0314E, Public Service will file quarterly progress reports in Proceeding No. 18A-0905E regarding the Project's progress during construction. These reports will cover the Cheyenne Ridge Wind Farm and the Gen-Tie and will be filed at the end of each quarter following approval of the Project by the Commission.

ii. Timeframe 1 Cost Recovery

The Settling Parties agree that Public Service will forgo cost recovery and a current return on Construction Work in Progress ("CWIP") until the Project is in commercial operation. The Company will instead accrue interest at the AFUDC rate.

B. Timeframe 2

Timeframe 2 covers the time from commercial operation of the Project to the effective date of new rates from Public Service's next electric base rate proceeding filed after commercial operation of the Project.⁸

⁷ Direct Testimony of Brooke A. Trammell, at 55:8-9 (filed Dec. 21, 2018).

⁸ Direct Testimony of Brooke A. Trammell, at 55:10-11 (filed Dec. 21, 2018).

i. Timeframe 2 Annual Reporting

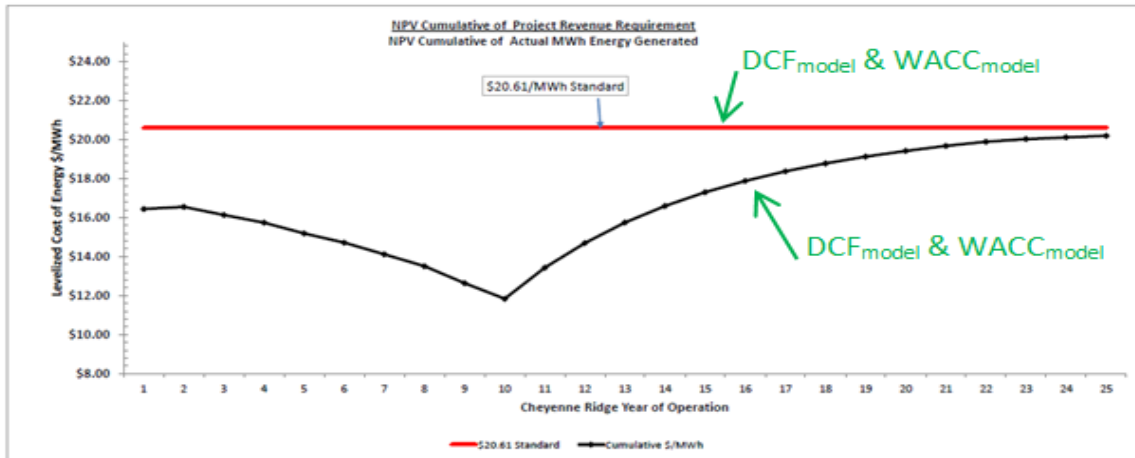
During Timeframe 2, the Settling Parties agree that Public Service will file annual reports on or before June 1 of each year following the first year of commercial operation of the Project that include actual Project costs for the categories of costs identified in Highly Confidential Settlement Exhibit A.⁹ As part of these reports, the Company will chart the CPM Measure and the CPM Standard consistent with Attachment BAT-3 to the Direct Testimony of Brooke A. Trammell. In annual reports filed during Timeframe 2, the Company will provide two representations for charting the CPM Measure against the CPM Standard:

- *Representation 1 - Locked.* The first representation will be “locked.” By “locked,” the Settling Parties mean that the representation will use the as-modeled Weighted Average Cost of Capital (“WACC”) and discount factor for both the CPM Measure (i.e., the cumulative \$/MWh black line) and the CPM Standard (i.e., the red line). This representation is reflected in the Figure 1 below.¹⁰

⁹ All intervenors in Proceeding No. 18A-0905E, with the exception of any independent power producers that compete directly with Public Service, shall have access to Highly Confidential Settlement Exhibit A.

¹⁰ This figure is Attachment BAT-3 to the Direct Testimony of Brooke A. Trammell with annotations related to the WACC and discount factor.

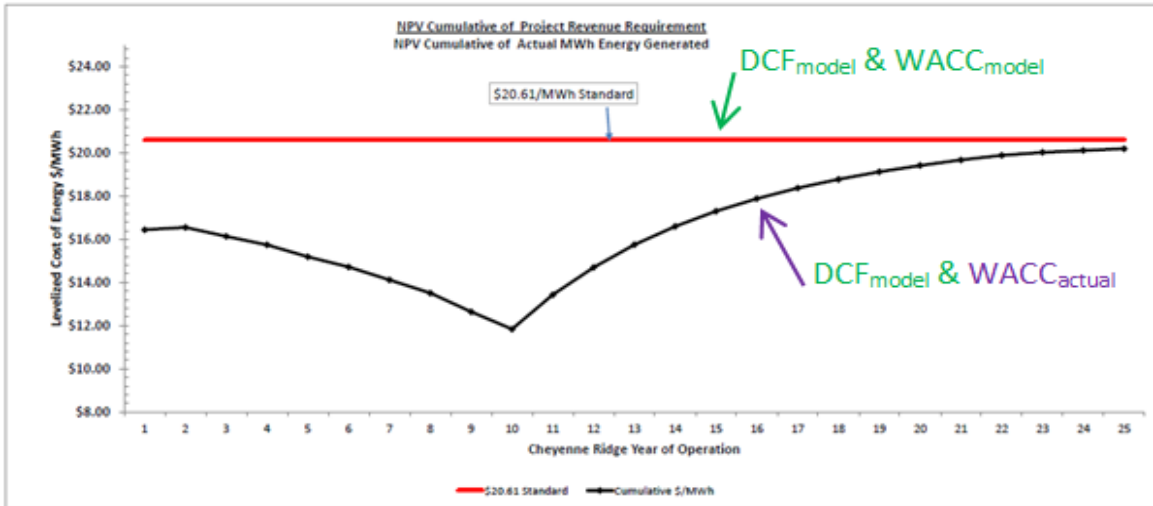
Figure 1: Representation Locked



- *Representation 2 - Float.* The second representation will “float.” By “floating,” the Settling Parties mean that the representation will use the as-modeled WACC and discount factor for the CPM Standard but use the Company’s most recently approved WACC for the CPM Measure. The discount factor will remain at 6.78% (as modeled) in this representation, as reflected in Figure 2 below.¹¹

¹¹ This figure is Attachment BAT-3 to the Direct Testimony of Brooke A. Trammell with annotations related to the WACC and discount factor.

Figure 2: Representation Float



In each annual report, the Company will provide forecasted Project costs for the remaining years utilizing both the “locked” and “float” representations described above with the locked or floating WACC and 6.78% discount rate used for the full forecast without modification. The Company will provide the following explanations, as applicable:

- Explanation if actual costs in the reporting year exceed forecasted costs for the reporting year.
- Explanation if actual costs, on a \$/MWh basis (using actual wind production levels), exceed the forecasted costs for the reporting year.
- Explanation if actual costs in the reporting year cause the levelized energy cost for the reporting year to exceed the CPM Standard.
- Explanation if levelized energy costs are projected to exceed the CPM Standard in any subsequent year.
- Explanation of changes to the CPM Measure forecast.

ii. Timeframe 2 Cost Recovery

The Settling Parties agree that, in Timeframe 2 following commercial operation of the Project, Public Service will recover Project costs through a mix of the ECA and Renewable Energy Standard Adjustment (“RESA”), as contemplated by § 40-2-124(1)(f)(IV)(A), C.R.S. and Rule 3660(i). Under this approach, the cost of the Project at and below system avoided costs will be recovered through the ECA while incremental costs will be recovered through the RESA. The Company may use RESA funds to cover incremental costs of the Project in Timeframe 2, but the Company will not advance funds to the RESA without prior Commission approval to cover any incremental costs of the Project.

As part of the Timeframe 2 cost recovery approach, PTCs based on the actual output generated by the Project will be passed to customers through the ECA as generated by the Project. In addition, DTA carrying costs will flow through the ECA during Timeframe 2, subject to the DTA Annual Cap. To the extent any component of the Timeframe 2 cost recovery approach requires a change to the ECA tariff, Public Service will circulate the proposed change to the Settling Parties in advance of filing. So long as the proposed revision is necessary for this purpose, the Settling Parties agree not to oppose any such change. The Settling Parties further agree that costs recovered through the ECA will be forecast on an annual basis and trued up on an annual basis. The revenue requirement for the Project to be recovered through the ECA will be allocated consistent with the Direct Testimony of Brooke A. Trammell.¹²

¹² See Direct Testimony of Brooke A. Trammell, at 58:8 – 62:7 (filed Dec. 21, 2018) (describing in detail the revenue requirement allocation process).

iii. Timeframe 2 Evaluation

a) *Timeframe 2 Evaluation Based Upon the Annual Report*

The Settling Parties agree that, in Timeframe 2, for purposes of evaluating ongoing capital additions, ongoing O&M expense, and the DTA Annual Cap, intervenors in Proceeding No. 18A-0905E shall have the opportunity to provide comments on the annual report within forty-five (45) days of the filing of the report. In addition, intervenors may propound discovery limited to the contents of the annual report within ten (10) business days of the filing of the report and Public Service agrees to a seven (7) calendar day response time. The Company has the opportunity to respond to comments within thirty (30) days.

The Company will make its best efforts to resolve any identified deficiencies related to the annual report provided in the comments of any filing intervenors. If a disputing intervenor and the Company cannot resolve the disputed issues or identified deficiencies, then the parties shall jointly file a written notice to the Commission, together with a proposed procedure for the Commission's resolution, as appropriate.¹³ The Company and any disputing intervenor(s) agree to seek Commission resolution of the issues in time for inclusion in a timely ECA filing.

Following the Commission's review of the comments and any resolution of disputed issues, if the Commission determines any costs to have been unreasonably incurred as part of the evaluation process, the Company will provide a credit to customers through the ECA true-up process in the amount of the cost determined to have been unreasonably incurred by the Commission.

¹³ The proposed procedural path may or may not be a fully litigated path but the Settling Parties reserve the right to provide sworn affidavits to accompany pleadings or to put on witnesses at any hearing on disputed issues or identified deficiencies in any annual report.

b) Timeframe 2 Evaluation of Wind Production

The Settling Parties agree that for Timeframe 2, wind production will be evaluated in the first electric base rate proceeding filed after commercial operation of the Project. If the Commission assesses any penalty as part of the evaluation process, the Company will pay the penalty by providing a credit to customers through the ECA. The Settling Parties agree not to challenge the issuance of penalties on procedural grounds or because of retroactivity. The Company will include any ordered credits to customers as a line item in Highly Confidential Settlement Exhibit A to its annual reports. To the extent the Commission invalidates any penalty because of retroactivity, the Company commits to identify a mechanism to pay the penalty to customers consistent with regulatory principles.

C. Timeframe 3

Timeframe 3 covers the time from the effective date of new rates from the next electric base rate proceeding after commercial operation of the Project through the end of the Project's useful life.¹⁴

i. Timeframe 3 Annual Reporting

During Timeframe 3, the Settling Parties agree that Public Service will file annual reports on or before June 1 of each year following the first year of commercial operation that include actual project costs for the categories of costs identified in Highly Confidential Settlement Exhibit A.¹⁵ As part of these reports, the Company will chart the CPM Measure and the CPM Standard consistent with Attachment BAT-3 to the Direct

¹⁴ Direct Testimony of Brooke A. Trammell, at 55:13-14 (filed Dec. 21, 2018).

¹⁵ The Settling Parties agree that in Timeframe 3, intervenors in the first electric base rate proceeding after commercial operation (or the most recent electric base rate proceeding after commercial operation for annual reports later in Timeframe 3), with the exception of any independent power producer or other intervenor that competes directly with Public Service, shall have access to Highly Confidential Settlement Exhibit A throughout Timeframe 3.

Testimony of Brooke A. Trammell. In Timeframe 3, however, reported actual costs will take two forms:

- *Annual Revenue Requirement Form.* Actuals that reflect the costs of the Project in Timeframe 3 consistent with Attachment SPB-1 to the Direct Testimony of Steven P. Berman (i.e., the revenue requirement for a particular year) and accounting for all other provisions agreed to in this Agreement, including the DTA Annual Cap.
- *Annual Recovered Revenues Form.* Recovered actuals based upon the level at which the Project is in base rates for a particular year consistent with the most recent revenue requirement approved for the Company in a rate proceeding (i.e., revenues actually recovered pursuant to an approved cost of service) accounting for all other provisions in this Agreement, including the DTA Annual Cap and PTCs. This form accounts for the fact that, with the exception of PTCs and DTA carrying costs as described below, Project costs will be recovered through base rates during Timeframe 3.¹⁶

Based upon these two forms of reported actuals, the Settling Parties agree that in annual reports filed during Timeframe 3 the Company will provide four representations for charting the CPM Measure against the CPM Standard:

- *Representation 1 – Locked with Annual Revenue Requirement Form.* The first representation will use the as-modeled WACC and discount factor for both the CPM Measure and the CPM Standard for actuals in the Annual Revenue Requirement Form.

¹⁶ The RES/No RES treatment for the Project in Timeframe 3 will be consistent with the Company's direct case. See Direct Testimony of Brooke A. Trammell, at 62:19 – 63:10 (filed Dec. 21, 2018).

- *Representation 2 – Float with Annual Revenue Requirement Form.* The second representation will use the as-modeled WACC and discount factor for the CPM Standard but use the Company's most recently approved WACC for the CPM Measure for actuals in the Annual Revenue Requirement Form. The discount factor will remain at 6.78% (as modeled) in this representation.
- *Representation 3 – Locked with Annual Recovered Revenues Form.* The third representation will use the as-modeled WACC and discount factor for both the CPM Measure and the CPM Standard for recovered actuals in the Annual Recovered Revenues Form. As discussed above, this form is based upon the level at which the Project is in base rates for a particular year consistent with the most recent revenue requirement approved for the Company in a base rate proceeding.
- *Representation 4 – Float with Annual Recovered Revenues Form.* The fourth representation will use the as-modeled WACC and discount factor for the CPM Standard but use the Company's most recently approved WACC for the CPM Measure for recovered actuals in the Annual Recovered Revenues Form. As discussed above, this form is based upon the level at which the Project is in base rates for a particular year consistent with the most recent revenue requirement approved for the Company in a base rate proceeding. The discount factor will remain at 6.78% (as modeled) in this representation.

In any annual Report, the Company will provide forecasted Project costs for remaining years utilizing the representations. The Company will provide the following explanations, as applicable:

- Explanation if actual costs in the reporting year exceed forecasted costs for the reporting year.
- Explanation if actual costs, on a \$/MWh basis (using actual wind production levels), exceed the forecasted costs for the reporting year.
- Explanation if actual costs in the reporting year cause the levelized energy cost for the reporting year to exceed the \$20.61/MWh CPM Standard.
- Explanation if levelized energy costs are projected to exceed the CPM Standard in any subsequent year.
- Explanation of changes to the CPM Measure forecast.

ii. Timeframe 3 Cost Recovery

The Settling Parties agree that, in Timeframe 3 following the first electric base rate proceeding after commercial operation of the Project, the Project will be placed in rate base and Public Service will recover Project costs through base rates.¹⁷ The Settling Parties further agree to two discrete exceptions to this cost recovery treatment. First, PTCs based upon the actual output generated by the Project will continue to be passed to customers through the ECA as generated by the Project until the Project no longer generates PTCs. Second, DTA carrying costs will continue to flow through the ECA during Timeframe 3 subject to the DTA Annual Cap. To the extent either or both of these exceptions require a change to the ECA tariff, the Settling Parties agree not to oppose any such change, so long as the proposed revision is necessary for this purpose.

¹⁷ The point cost will also be evaluated in the first electric base rate proceeding after commercial operation of the Cheyenne Ridge Wind Project. As explained in Section II(A), the point cost for capital costs agreed to by the Settling Parties is \$743 million, inclusive of AFUDC.

iii. Timeframe 3 Evaluation

a) *Timeframe 3 Evaluation of Ongoing Capital Additions and Ongoing O&M Expense*

Information regarding ongoing capital additions and ongoing O&M expense will be included in the annual report. However, the Settling Parties agree that in Timeframe 3, evaluation of the prudence of ongoing capital additions and ongoing O&M expense related to the Project will occur in each electric base rate proceeding filed by Public Service after the Project is placed in base rates.

b) *Timeframe 3 Evaluation Based Upon the Annual Report*

The Settling Parties agree that, in Timeframe 3, for purposes of evaluating the DTA Annual Cap, intervenors in the first electric base rate proceeding after commercial operation (or the most recent electric base rate proceeding after commercial operation for annual reports later in Timeframe 3) will have the opportunity to provide comments on the annual report within forty-five (45) days of the filing of the report. In addition, these parties may propound discovery limited to the contents of the annual report within ten (10) business days of the filing of the report and Public Service agrees to a seven (7) calendar day response time. The Company has the opportunity to respond to comments within thirty (30) days.

The Company will make best efforts to resolve any identified deficiencies related to the annual report provided in the comments of any filing intervenors. If any disputing intervenor and the Company cannot resolve the disputed issues or identified deficiencies, then the parties shall jointly file a written notice to the Commission,

together with a proposed procedure for the Commission's resolution, as appropriate.¹⁸

The Company and any disputing intervenor(s) agree to seek Commission resolution of the issues in time for inclusion in a timely ECA filing.

Following the Commission's review of the comments and any resolution of disputed issues, if the Commission determines any costs to be unreasonably incurred as part of the evaluation process, the Company will provide a credit to customers through the ECA true-up process in the amount of the cost determined to be unreasonably incurred by the Commission.

c) Timeframe 3 Evaluation of Wind Production

The Settling Parties agree that for Timeframe 3, wind production will be evaluated every five years after the effective date for rates from the first electric base rate proceeding following the commercial operation of the Project.¹⁹ The wind evaluation will occur on a cumulative basis back to the first year of commercial operation, and in considering the issuance of penalties, the Commission may consider the entire five-year period subject to the wind production period.

The Settling Parties agree that, in Timeframe 3, for purposes of evaluating cumulative wind production, intervenors in the most recent electric base rate proceeding after commercial operation will have the opportunity to provide comments on the wind production within forty-five (45) days of the filing of the wind evaluation. In addition, these parties may propound discovery limited to the contents of the wind evaluation within ten (10) business days of the filing and Public Service agrees to a seven (7)

¹⁸ The proposed procedural path may or may not be a fully litigated path but the Settling Parties reserve the right to provide sworn affidavits to accompany pleadings or to put on witnesses at any hearing on disputed issues or identified deficiencies in any annual report.

¹⁹ Accordingly, if for example the effective date of rates from the first electric base rate proceeding following commercial operation of the Cheyenne Ridge Wind Project is January 1, 2023, then wind evaluations will occur on five-year intervals from the January 1, 2023 date.

calendar day response time. The Company has the opportunity to respond to comments within thirty (30) days.

The Company will make best efforts to resolve any identified deficiencies related to the wind evaluation provided in the comments of any filing intervenors. If any disputing intervenor and the Company cannot resolve the disputed issues or identified deficiencies, then the parties shall jointly file a written notice to the Commission, together with a proposed procedure for the Commission's resolution, as appropriate.²⁰

If the Commission assesses any penalty as part of the evaluation process, the Company will pay the penalty by providing a credit to customers through the ECA. The Settling Parties agree not to challenge the issuance of penalties on procedural grounds or because of retroactivity. The Company will include any ordered credits to customers as a line item in Highly Confidential Settlement Exhibit A to its Annual Reports. To the extent the Commission invalidates any penalty because of retroactivity, the Company commits to identify a mechanism to pay the penalty to customers consistent with regulatory principles.

IV. Miscellaneous

A. Electric Base Rate Proceeding Information

The Settling Parties agree that the Company shall identify the Project costs and expenses in all electric base rate proceedings during the pendency of the Project, including O&M expense, lease expenditures, and property taxes.

²⁰ The proposed procedural path may or may not be a fully litigated path but the Settling Parties reserve the right to provide sworn affidavits to accompany pleadings or to put on witnesses at any hearing on disputed issues or identified deficiencies in any annual report.

B. Generation Performance Metric

The Settling Parties agree that the Generation Performance Metric determined in this proceeding will be as outlined in Attachment JFH-1 to the Direct Testimony of James F. Hill in this proceeding.

C. CPCN Findings on Gen-Tie Design and Operation

The Settling Parties agree that Proceeding No. 18A-0905E will not include any specific finding related to voltage performance, transient stability, or interconnection studies, or additional costs that may result from the findings of these studies. This information will be provided in subsequent filings with the Commission for additional transmission investment related to the CEPP.

D. Executed Agreements

The Settling Parties agree that Public Service will provide both a fully executed Turbine Supply Agreement and Sale of Components Agreement to Staff and OCC prior to the commercial operation date of the Project.

E. Future Considerations

If factors outside the control of Public Service affect the cost of the Project, the Settling Parties agree Public Service may file with the Commission a proposal addressing these factors and seeking appropriate changes to the evaluation framework established in this proceeding. The Settling Parties may take any position with respect to any proposed change in the reporting and evaluation framework and cost recovery as a result of these factors. If changes in federal corporate tax law materially impact the Company's ability to use PTCs or its calculation of the DTA Annual Cap, Public Service will file with the Commission to address these impacts. To the extent a modification to

the CPM Standard of \$20.61/MWh or other fundamental components of the evaluation framework are necessary, the Settling Parties agree the Company may file a motion to modify the final decision in this proceeding and the Commission can issue a modification to the CPM through an order on any such motion. The Settling Parties may take any position with respect to a motion to modify the decision as a result of these factors.

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 the 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, it, as well as the negotiations or discussions undertaken in conjunction with the 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 the 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

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 15th day of March, 2019.

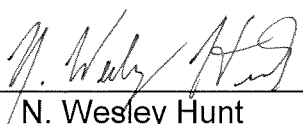
Agreed on behalf of:

PUBLIC SERVICE COMPANY
OF COLORADO

By: 

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Regional Vice President, Rates and
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Approved as to Form:

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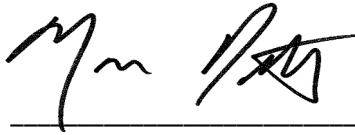
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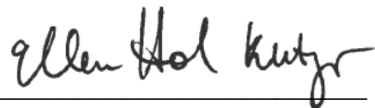
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