

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

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IN THE MATTER OF APPLICATION OF )  
PUBLIC SERVICE COMPANY OF )  
COLORADO FOR AN ORDER )  
GRANTING TO IT A CERTIFICATE OF ) PROCEEDING NO. 20A-0544FEG  
PUBLIC CONVENIENCE AND )  
NECESSITY TO EXERCISE )  
FRANCHISE RIGHTS IN THE CITY OF )  
BOULDER )

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**COMPREHENSIVE SETTLEMENT AGREEMENT**

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**Introduction and Identification of Parties**

Public Service Company of Colorado (“Public Service” or the “Company”), Staff of the Colorado Public Utilities Commission (“Staff”), the Colorado Office of Consumer Counsel (“OCC”) and the City of Boulder, Colorado (“Boulder” or “City”), (collectively, the “Settling Parties” or “parties”) hereby enter into this Comprehensive Settlement Agreement (“Settlement Agreement”) to resolve all issues that have been raised in this proceeding.

**Background**

On December 21, 2020, Public Service initiated this proceeding by filing a Verified Application for An Order Granting to it a Certificate of Public Convenience and Necessity to Exercise Franchise Rights in the City of Boulder (“Application”). On that same day, Public Service also filed Direct Testimony in support of its Application.

**Colorado PUC E-Filings System**

Staff, the OCC and Boulder intervened in the proceeding and a consensus procedural schedule was developed at the direction of the Administrative Law Judge (“ALJ”). The ALJ adopted this procedural schedule by Decision No. R21-0157-I.

Staff and the OCC filed the Answer Testimonies and attachments on April 27, 2021. Their respective Answer Testimony covered a variety of topics and terms, of three agreements related to the Franchise Agreement - the Settlement Agreement, Energy Partnership Agreement and Load Interconnection Agreement (“Associated Agreements”).

On May 20, 2021, Public Service filed Rebuttal Testimony and the Boulder filed Cross-Answer Testimony. Those testimonies’ focus was on the public interest in resolving the dispute between the Company and the City by approval of the Application, the lack of need to fully litigate terms of the Associated Agreements for which no Commission approval was being sought, and a defense and explanation of many of said terms and conditions stated in the Franchise Agreement.

The parties to the proceeding commenced settlement negotiations and ultimately reached a settlement in principle on May 28, 2021. The Settlement Agreement filed here represents the comprehensive agreements of the Settling Parties to resolve the issues in this Proceeding No. 20A-0544FEG that were raised or could have been raised by the Settling Parties.

### **Settlement Terms and Conditions**

#### **1. Franchise Agreement and Exercise of Franchise Rights**

The Settling Parties agree that:

- The Commission should grant the Company’s Application for approval of Franchise Agreement and to exercise franchise rights under the Franchise Agreement, without modification.

- The Commission's Decision should specifically note that the approval is effective per the Franchise Agreement terms, including the effective date stated therein.

The Settling Parties acknowledge such approval resolves more than a decade of ongoing dispute between the Company and the City, and such resolution is in the public interest.

## 2. **Associated Agreements**

The Settling Parties agree that the Commission is not asked to either approve, or disapprove, any of the other agreements associated with the Franchise Agreement (*i.e.*, the Settlement Agreement, the Energy Partnership Agreement, and the Load Interconnection Agreement) ("Associated Agreements") or the specific terms and conditions stated within each of them. As such the Commission's approval of the Associated Agreements is not needed in this proceeding.

The Commission is not bound by the terms of the Associated Agreements; those agreements and the attendant requirements bind only the parties to the Associated Agreements.

The Settling Parties agree that the Company will not implement the Franchise Agreement and Associated Agreements in any manner inconsistent with Colorado law.

## 3. **Future Proceedings**

Staff and the OCC have expressed concerns regarding certain terms and conditions of the Associated Agreements. The Settling Parties agree that the immediate proceeding does not require determination of those concerns and future

proceedings will provide the equivalent opportunity for their review by the Commission. This Settlement Agreement does not waive any right of Staff and the OCC to take any future position with regard to actions taken and/or costs incurred pursuant to the Associated Agreements in future proceeding(s).

Specifically, costs related to the Associated Agreements will be the subject of future cost recovery proceedings. Interested stakeholders, including but not limited to Staff and the OCC, may intervene in these cost recovery proceedings to provide analysis and argument regarding the prudence of the costs to be recovered. The burden shall lie with the Company to justify that any future cost recovery proposals are in the public interest and cost recovery should be approved. The Company acknowledges that the three agreements, which collectively comprise the Associated Agreements, are only binding on the Company and Boulder, and any Company expenditures to satisfy the terms of any of the Associated Agreements are made with the risk that cost recovery may be later denied. The Company also acknowledges concerns have been raised and future challenges to expenditures may be forthcoming in the following areas:

- \$11,526,857 in Undergrounding Funds for Franchise Expiration Decade (2011-2020), a provision of the PSCo-Boulder Settlement Agreement;
- Legal Fees and legal/regulatory expenses associated with the dismissal of a Boulder condemnation lawsuit, a provision of the PSCo-Boulder Settlement Agreement;
- Legal and regulatory costs required to manage the PSCo-Boulder Load Interconnection Agreement; and
- Generally, the potential for any cost incurred for projects connected to any of the three Associated Agreements which is not an ordinary course of business expense and/or was incurred unreasonably or imprudently.

With regard to the four bullet point items discussed above, the burden shall lie with Public Service to justify that recovery of such costs is in the public interest and should be approved. No presumption of prudence is being sought or acquiesced to through this Settlement Agreement for such expenditures.

**4. Undergrounding Funds for Franchise Expiration Decade**

One specific concern raised by Staff and the OCC regards the Company's provision of \$11,526,857 in undergrounding funds under Section H (1) of the PSCo-Boulder Settlement Agreement, which reads in relevant part:

"... As a one-time settlement accommodation and without setting any precedent PSCo shall provide funding for undergrounding in an amount equal to one percent of gross electrical revenues received by PSCo from customers in Boulder for the period between the date of expiration of the 1990 Franchise and the effective date of the 2020 Franchise."

Consistent with Section 3 of this PSCo-Boulder Settlement Agreement, the Settling Parties to this instant Settlement Agreement agree that, for each undergrounding project completed in satisfaction of Section H (1) of the PSCo-Boulder Settlement Agreement, the Company will identify and separate project capital costs within the future rate case proceeding(s) where recovery is sought.

The burden shall lie with Public Service to justify that recovery of such costs is in the public interest and should be approved. No presumption of prudence is being sought or acquiesced to through this Settlement Agreement for such expenditures.

**5. Potential Reimbursements to the City of Boulder**

Staff has raised concerns with the potential for the Company, at some time in the future, to seek cost recovery for reimbursements paid to the Boulder for

certain pilot projects or programs created by Boulder and paid for entirely through Boulder customer-funded sources. In simplified terms, the Energy Partnership Agreement allows for the potential of reimbursement for such projects or programs that Public Service adopts and then offers to non-Boulder customers.

Consistent with Section 3 of this Settlement Agreement, the Settling Parties agree that cost recovery for reimbursements to Boulder will be addressed, as appropriate, in future proceeding(s), filed by the Company. The Settling Parties also agree that the Company will identify and separate capital costs for each such reimbursement where practicable for such reimbursement proposals arising from Section V of the Energy Partnership Agreement within a rate case or other appropriate future proceeding concerning costs. If and when it is not practicable to identify and separate capital costs, the Company will detail the capital cost(s) at issue and explain why it is not practicable to identify and separate the capital cost(s) only associated with reimbursements to Boulder.

The burden shall lie with the Company to justify that any such future reimbursement proposals are in the public interest and that cost recovery should be approved. No presumption of prudence is being sought or acquiesced to through this Settlement Agreement for such expenditures.

6. **Boulder-Specific Projects and/or Pilots**

Consistent with Section 3 of this Settlement Agreement, the Settling Parties agree that cost recovery for Boulder-specific projects and/or pilots developed through the Comprehensive Community Grid Planning and Programs (“CCGPP”) will be addressed in the future proceeding(s) filed by the Company. The Settling

Parties also agree that the Company will identify and separate capital costs where practicable for costs arising specifically from the CCGPP under Section III of the Energy Partnership Agreement. If and when it is not practicable to identify and separate capital costs, the Company will detail the capital cost(s) at issue and explain why it is not practicable to identify and separate the capital cost(s) only associated with the CCGPP.

The burden shall lie with the Company to justify that any such future Boulder-specific project and/or pilot proposed for recovery is in the public interest and that cost recovery should be approved. No presumption of prudence is being sought or acquiesced to through this Settlement Agreement for such expenditures.

7. **Boulder and Public Service Meeting Transparency**

The Settling Parties agree that the public interest is served by ensuring public transparency for the Executive Team meetings as the Company and Boulder implement this new Franchise Agreement and the Associated Agreements. In furtherance of such interests, the Company and Boulder agree to publish information on the first two years of Executive Team meetings held in compliance with Section II of the Energy Partnership Agreement. Staff and the OCC may request that Public Service and Boulder extend the reporting period past the first two years of the Franchise Agreement. Public Service and Boulder make no such commitment to extend the reporting period at this time, but will consider the merits of the request if and as appropriate at the time the request is made. The form of the published information is yet to be determined, but will at minimum include the following information:

- A list of individuals in attendance;
- The date, time, and location of the meeting;
- Issues discussed;
- Decision points and outcomes; and
- Matters identified for future discussion.

For convenience, the Settling Parties request that this proceeding be left open as a repository for the Company to file copies of these Executive Team meeting publications.

### **GENERAL PROVISIONS**

1. This Settlement 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 Settlement Agreement. Furthermore, this Settlement Agreement does not constitute agreement, by any Settling Party, that any principle or methodology contained within or used to reach this Settlement 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 Settlement Agreement or a Commission order concerning the Settlement Agreement, shall attach to any principle or methodology contained in or used to reach this Settlement Agreement, except as expressly set forth herein.

2. Each Settling Party understands and agrees that this Settlement 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 Settlement Agreement is



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 Settlement Agreement have been conducted in subject to Rule 408 of the Colorado Rules of Evidence (“CRE”).

4. Nothing in this Settlement Agreement shall constitute a waiver by any Settling Party with respect to any matter not specifically addressed in this Settlement Agreement. In the event this Settlement Agreement becomes null and void or in the event the Commission does not approve this Settlement Agreement, this Settlement Agreement, as well as the negotiations or discussions undertaken in conjunction with this Settlement 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 Settlement Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Settlement Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Settlement 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 Settlement Agreement. However, each Settling Party expressly reserves the right to advocate positions different from those stated in this Settlement Agreement in any proceeding other than one

necessary to obtain approval of, or to implement or enforce, this Settlement 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 Settlement 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 Settlement 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 Settlement Agreement (including attachments).

8. This Settlement Agreement shall not become effective until the Commission issues a final decision addressing the Agreement. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party may withdraw from the Settlement 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 Settlement Agreement, this Settlement 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 Settlement Agreement.

10. This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Settlement Agreement with respect to the

issues addressed by this Settlement Agreement. This Settlement 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 Settlement Agreement by the Settling Parties to the same extent that an original signature could be used.

Dated this 4<sup>th</sup> day of June, 2021.

Agreed on behalf of:

**PUBLIC SERVICE COMPANY OF COLORADO**

By: /s/ Brooke A. Trammell  
Brooke A. Trammell  
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Rates and Regulatory Affairs  
Public Service Company of Colorado

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CITY OF BOULDER



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