

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0215E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR RECOVERY OF 2022 COAL DISPLACEMENT POWER COSTS AND OTHER 2022 ELECTRIC COMMODITY ADJUSTMENT DEFERRED COSTS PURSUANT TO DECISION NO. C22-0830-I.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY ACCEPTING NON-UNANIMOUS
COMPREHENSIVE SETTLEMENT AGREEMENT,
GRANTING APPLICATION AS AMENDED BY
NON-UNANIMOUS COMPREHENSIVE SETTLEMENT
AGREEMENT, AND CLOSING PROCEEDING**

Mailed Date: December 14, 2023

TABLE OF CONTENTS

I. PROCEDURAL BACKGROUND	2
II. BACKGROUND OF APPLICATION.....	5
A. Proceeding No. 22AL-0531E	5
B. Proceeding No. 23L-0080E	6
III. APPLICATION	6
IV. SETTLEMENT AGREEMENT	8
V. PARTIES' POSITIONS	9
A. Public Service and Staff	9
B. UCA.....	12
VI. ANALYSIS.....	16
A. Analytical Approach.....	16
B. Burden of Proof	16
C. Findings and Conclusions.....	17
D. Conclusions of Law	24
VII. RECOMMENDED DECISION	25

VIII. ORDER.....25

A. The Commission Orders That:25

I. PROCEDURAL BACKGROUND

1. On May 1, 2023, Public Service Company of Colorado (Public Service) filed a Verified Application (Application) seeking approval to recover its 2022 Coal Displacement Power Costs and other 2022 electric commodity adjustment (ECA) deferred costs pursuant to Decision No. C22-0830-I, issued on December 22, 2022, in Proceeding No. 22AL-0531E. With the Application, Public Service filed: (a) a Motion for Alternative Form of Notice; (b) a Motion for Partial Variance from Decision No. C06-1379, which issued on December 1, 2006 in Proceeding No. 06S-234EG; and (c) direct testimony of Jeffrey R. Knighten and Michael L. Boughner in support of the Application. The Coal Displacement Power Costs sought in the Application are the incremental costs of obtaining power from sources other than certain coal-fired power generating plants because the generation of those plants was reduced from August, 2022 to December 2022, to conserve coal.

2. On May 3, 2023, the Commission issued a notice of the Application.

3. On May 4, 2023, the Commission issued Decision No. C23-0295-I granting Public Service’s Motion for Alternative Form of Notice.

4. On May 18, 2023 and June 2, 2023, the Office of the Utility Consumer Advocate (UCA) and Trial Staff of the Commission (Staff) filed Notices of Intervention by Right, respectively.

5. On June 7, 2023, the Commission deemed the Application complete and referred the proceeding to an Administrative Law Judge (ALJ) by minute entry. The proceeding was subsequently assigned to the undersigned ALJ.

6. On July 5, 2023, the ALJ issued Decision No. R23-0441-I that scheduled a remote prehearing conference for July 19, 2023, and required the parties to confer about a procedural schedule and for Public Service to file a report of the conferral by July 17, 2023.

7. On July 14, 2023, Public Service filed the Conferral Report. In it, Public Service reported that the parties had agreed to the following procedural schedule (Consensus Schedule):

<u>Event</u>	<u>Deadline</u>
Answer Testimony	August 25, 2023
Rebuttal/Cross-Answer Testimony	September 22, 2023
Stipulation(s) and Settlement Agreement(s) Hearing Witness Matrix Corrections to Pre-Filed Testimony and Exhibits Prehearing Motions	September 29, 2023
Hearing	October 12-13, 2023
Statements of Position (SOP)	November 3, 2023

Public Service also reported that the parties agree that: (a) Commission Rule 1405 will govern discovery; and (b) the hearing should be conducted as a hybrid hearing.

8. On July 19, 2023, the ALJ issued Decision No. R23-0466-I that extended the statutory deadline and adopted the Consensus Schedule, with one addition.

9. On August 23, 2023, Public Service filed a Notice of Non-Unanimous Comprehensive Settlement Agreement in Principle, Unopposed Motion to Vacate and Amend

Procedural Schedule, and Request for Waiver of Response Time (Unopposed Motion). As detailed in the Unopposed Motion, the Settlement Agreement is between Public Service and Staff, and UCA opposes the settlement. The Unopposed Motion proposed deadlines of September 7, 2023 and September 18, 2023, for the filing testimony in support of, and in opposition to, the Settlement Agreement, respectively.

10. On September 7, 2023, Messrs. Knighten and Boughner filed testimony in support of the Settlement Agreement on behalf of Public Service, and Kehinde Abiodun filed testimony in support of the Settlement Agreement on behalf of Staff.

11. On September 8, 2023, the ALJ issued Decision No. R23-0578-I that granted the Unopposed Motion.

12. On September 8, 2023, UCA filed an Unopposed Motion for Extension to File Testimony in Opposition to the Settlement Agreement and Request to Waive Response Time (Second Unopposed Motion). In the Second Unopposed Motion, UCA requested to extend the deadline for filing testimony in opposition to the Settlement Agreement from September 18, 2023, to September 21, 2023.

13. On September 20, 2023, the ALJ issued Decision No. R23-0630-I that granted the Second Unopposed Motion.

14. On September 21, 2023, Chris Neil filed testimony in opposition to the Settlement Agreement on behalf of the UCA.

15. On October 12, 2023, the hybrid hearing took place as scheduled.

16. On November 3, 2023, Public Service and Staff filed a Joint Statement of Position (SOP) and UCA filed a SOP on its own behalf.

II. BACKGROUND OF APPLICATION

A. **Proceeding No. 22AL-0531E**

17. On November 30, 2022, Public Service filed Advice Letter No. 1907-Electric and accompanying tariff sheets that sought to revise its ECA effective January 1, 2023 (Q1 2023 ECA Filing), which initiated Proceeding No. 22AL-0531E. As part of the Q1 2023 ECA Filing, Public Service indicated that the ECA was approximately \$123 million under-recovered as of October 2022, up from a deferred account balance of approximately \$50 million as of July 2022, due to unforecasted cost increases. Public Service contended that the under-recovered costs were primarily driven by: (a) natural gas prices exceeding the Company's forecast during the second quarter of 2022, and (b) labor shortages that resulted in railroads reducing contracted coal deliveries to Public Service's coal-fired power plants beginning in August 2022. As a result of the coal under-deliveries, Public Service implemented coal conservation measures at its coal plants (Units 1, 2, and 3 at the Comanche Generating Station (Comanche 1-3), the Pawnee Generating Station (Pawnee), and Units 1 and 2 at Craig Generating Station (Craig 1-2) (collectively, the Affected Coal-Fired Power Generating Facilities)), and replaced a portion of those plants' generation with natural gas-fired generation – with the goal of maintaining coal inventories at those plants. Gas-fired generation is more expensive than coal-fired generation, which drove up the under-recovered costs.

18. In Decision No. C22-0830-I, issued on December 22, 2022, the Commission permitted Public Service to file an amended Advice Letter No. 1907-Electric, that would remove the \$123 million deferred account balance from the ECA revenue requirement used to calculate the rates proposed for effect January 1, 2023. The Q1 ECA would then “take effect in

accordance with the ECA's normal operations.”¹ The Commission further stated that “Public Service may separately propose discrete methods for cost recovery of the \$123 million deferred balance amount by filing an application in a new proceeding.”² Decision No. C22-0830-I set a deadline of December 27, 2022 for the filing of the amendment to Advice Letter No. 107-Electric.

B. Proceeding No. 23L-0080E

19. Public Service subsequently estimated that approximately \$70 million of the \$123 million in deferred costs were not related to the coal supply issues. In an Application filed on February 15, 2023, Public Service proposed, among other things, to immediately return this portion of the set-aside costs to the ECA deferred account balance and amortize the net balance over a four-month period, while leaving the remaining \$53.8 million for review in the then-forthcoming separate application filing. The Commission approved the Company's requests on February 24, 2023.³

III. APPLICATION

20. In the Application, Public Service addressed recovery of the remaining \$53.8 million through the ECA. However, Public Service explained that it had “refined and revised its \$53.8 million estimate for the portion of the set-aside costs that are tied to coal displacement power.”⁴ Specifically, while it used Plexos modeling software to conduct a simplified analysis that arrived at \$53.8 million, Public Service later used the GenTrader modeling software to perform a more detailed analysis.⁵ As a result of these revisions,

¹ Decision No. C22-0830-I issued in Proceeding No. 22AL-0531E on December 22, 2022 at 8 (¶ 24).

² *Id.*

³ Decision No. C23-0139 issued in Proceeding No. 23L-0080E at 3 (¶ 5), 4-5 (¶¶ 9-10).

⁴ Application at 4-5 (¶ 4).

⁵ Hearing Exhibit 102 at 26:10-20 (Direct Testimony of Mr. Failer).

Public Service calculated the 2022 Coal Displacement Power Costs at approximately \$29 million, while the remaining \$24.8 million were identified as unrelated to the 2022 coal supply issues.⁶ The Application thus requested recovery of the \$29 million in alleged Coal Displacement Power Costs plus interest, which, if approved in this proceeding, would be included in Public Service's Q1 2024 ECA Advice Letter to be filed on November 30, 2023, with an effective date of January 1, 2024.⁷

21. Public Service further stated that it intended to propose the return of the approximately \$24.8 million to the ECA as part of its then-forthcoming Q3 ECA Advice Letter to be filed on May 31, 2023 with an effective date of July 1, 2023.⁸ However, if the Commission did not approve the request in Public Service's Q3 ECA Advice Letter filing, Public Service requested that the Commission approve in this proceeding the recovery of the \$24.8 million plus interest, which would then be included in Public Service's Q1 2024 ECA Advice Letter to be filed on November 30, 2023 with an effective date of January 1, 2024.⁹

22. Based on the foregoing, Public Service requested in the Application a finding that the 2022 Coal Displacement Power Costs were prudently incurred and are not subject to re-litigation in its "2022 ECA and [Purchased Capacity Cost Adjustment (PCCA)] Annual Prudence Review to be filed on or about August 2023."¹⁰ According to Public Service, "[t]his approach ensures administrative efficiency by avoiding unnecessary recovery delays and duplicative review processes for the 2022 Coal Displacement Power Costs."¹¹

⁶ Application at 5.

⁷ *Id.* at 2, 5 (¶ 5).

⁸ *Id.* at 2, 6 (¶ 7).

⁹ *Id.*

¹⁰ *Id.* at 5 (¶ 6).

¹¹ *Id.* at 5-6 (¶ 6).

IV. SETTLEMENT AGREEMENT

23. The Settlement Agreement includes four principal components. First, Public Service and UCA agree that the 2022 Coal Displacement Power Costs are \$37.6 million, not the approximately \$29 million identified in the Application.¹²

24. The increase in the 2022 Coal Displacement Power Costs resulted from Public Service conducting revised modeling “to reflect the options that would have been available for [Public Service’s] operations absent the coal adders.”¹³ Coal dispatch adders increase the generation cost of the generation facilities impacted by the coal shortage in the dispatch optimization modeling software used by Public Service to commit and dispatch its electric generating fleet to serve customer demand. By adding coal dispatch adders, the software recalculates the generating stack dispatch order.¹⁴ “Effectively, the dispatch adders work to economically reprioritize electric generating units, while still allowing the units to be committed if necessary to maintain system reliability.”¹⁵

25. Second, Public Service and Staff agree that Public Service will forgo recovery of carrying costs on the Coal Displacement Power Costs, which will amount to \$1.7 million or \$1.8 million, depending on the date of the final Commission decision in this proceeding.¹⁶

26. Third, Public Service and Staff agree that Public Service’s “actions in 2022 related to coal conservation, including the use of the coal displacement adders, were prudent.”¹⁷

27. Fourth, Public Service and Staff agree that the Commission should grant a partial variance “from certain provisions of Decision No. C06-1379 to allow for the Commission to

¹² Hearing Exhibit 103, Attach. JRK-4 at 2 (¶¶ III.1).

¹³ Hearing Exhibit 103 at 16:14-16 (Settlement Testimony of Mr. Knighten).

¹⁴ Hearing Exhibit 102 at 23:9-14 (Direct Testimony of Mr. Failer).

¹⁵ *Id.* at 23:14-16.

¹⁶ Hearing Exhibit 103, Attach. JRK-4 at 2-3 (¶¶ III.2-3).

¹⁷ *Id.* at 3 (¶ 5).

exclusively review and assess the prudence of certain ECA costs incurred by [Public Service] in calendar year 2022 through this proceeding rather than both in this proceeding, as directed by the Commission, and the Company's 2022 ECA/PCCA Annual Prudence Review (Proceeding No. 23A-0394E)."¹⁸ This means that the ALJ must hold that "the 2022 Coal Displacement Power Costs are not at issue in the concurrent 2022 ECA and [PCCA] prudence review proceeding, Proceeding No. 23A-0394E, and prudency issues related to fleet performance not due to coal conservation may be litigated in that proceeding."¹⁹

V. PARTIES' POSITIONS

A. **Public Service and Staff**

28. Public Service and Staff (Settlement Parties) contend that Public Service "prudently managed its coal inventories in the fall of 2022 through efforts to increase coal inventories and operate its system economically while experiencing coal supply shortages."²⁰ Specifically, the Settlement Parties agree that Public Service acted prudently in applying: (a) dispatch adders to Comanche Units 1 and 2 and Pawnee Generating Station beginning in August 2022, and Comanche Unit 3 in September 2022; (b) coal conservation measures for its share of Craig Generating Station; and (c) a higher, current spot spot-market fuel price when calculating the requested output of the Craig Units and resulting tagged purchase, rather than fuel prices negotiated in long-term supply contract agreements. They further agree that Public Service's actions prudently reduced generation from coal-fired electric generating

¹⁸ *Id.* at 3-4 (¶ 8).

¹⁹ Hearing Exhibit 103 at 15:11-15 (Settlement Testimony of Mr. Knighten).

²⁰ Joint SOP at 2.

facilities without requiring Public Service to declare these units unavailable, which could have impacted reliability of service to customers.²¹

29. The Settlement Parties also agree that the changes made to the 2022 Coal Displacement Power Costs from the approximately \$29 million identified in the Application, to \$37.6 million identified in the Settlement Agreement, are appropriate. Based on discovery requests propounded by Staff, Public Service reviewed its modeling that led to the calculation of the 2022 Coal Displacement Power Costs. That review led Public Service to reassess its assumption that Comanche 1 had been decommitted and shut down from August, 2022, to December, 2022, solely “in anticipation of the unit’s scheduled retirement on December 31, 2022, and to preserve the availability of the unit and its remaining useful life for operations in December during potential peak cold weather conditions.”²² Public Service determined that “Comanche 1 . . . was also decommitted, at least in part, to conserve coal in light of the railroad transportation disruptions.”²³ Staff agrees with this analysis, which causes the increase in the Coal Displacement Power Costs to increase to \$37.6 million. The Settlement Parties understand that the model is sensitive to inputs and assumptions, but believes that the estimate of Coal Displacement Power Costs generated by the model is the best possible under the circumstances.²⁴

30. Finally, the Settlement Parties agree that Public Service’s recovery of the increased Coal Displacement Costs resulting from Public Service’s updated analysis, together with Public Service’s agreement to forego recovery of the carrying costs on the Coal Displacement Power Costs, is in the public interest. The carrying costs are \$1.7 to \$1.9 million,

²¹ *Id.* at 6-7.

²² Hearing Exhibit 104 at 11:22-12:3 (Settlement Testimony of Mr. Boughner).

²³ *Id.* at 12:5-7.

²⁴ Joint SOP at 10.

depending on the date of a final decision in this proceeding.²⁵ The Settlement Parties believe that approval of the Settlement Agreement is “just, reasonable, and consistent with and not contrary to the public interest.”²⁶

31. According to the Settlement Parties, UCA’s conclusion that, in the fall of 2022, the Comanche 1 and the Craig and Hayden units should have run more, and Public Service’s combined cycle gas unit should have generally run more than its combustion turbine units, (Cherokee Unit 4 in particular) is flawed. As a general matter, UCA’s analysis is too simplistic because it does not include an hourly generation analysis, which is the time-based increment that serves as the basis for generation decisions.²⁷ As to UCA’s Comanche 1 analysis, the Settlement Parties contend that it “does not include an hourly analysis in any material way” and “does not consider what may have happened if the Company had run out of coal at Comanche Station.”²⁸ The analysis of the Craig and Hayden units is based on “cherry-picked” historical numbers for monthly generation, even from summer months, that UCA assumes the Craig and Hayden units could have produced in the fall of 2022, even though UCA recognizes that “unique facts and circumstances can influence generation from year to year and every year is different from an operational standpoint.”²⁹ Finally, as to UCA’s Cherokee 4 analysis, Public Service’s “Transmission Operations group” that is “responsible for system operations” implemented that unit’s must-run designation during the fall of 2022. According to the Settlement Parties, the must-run designation simply could not be ignored as doing so “can

²⁵ Hearing Exhibit 103, Attach. JRK-3 at 3 (¶ 3).

²⁶ *Id.* at 4 (¶ 11).

²⁷ Joint SOP at 13, 15, 18.

²⁸ *Id.* at 11, 12.

²⁹ *Id.* at 13.

risk local reliability and [] other unacceptable consequences.”³⁰ The Settlement Parties conclude that UCA’s opposition does not undermine the conclusion that the Settlement Agreement is in the public interest.

B. UCA

32. UCA makes three primary arguments in support of its conclusion that the Settlement Agreement should be rejected, and the Commission should disallow: (a) all Coal Displacement Power Costs attributable to the coal shortages at Pawnee and Comanche; (b) approximately \$5.6 million in savings from additional generation at Craig and Hayden; and (c) approximately \$7.4 million from using combined cycle plants instead of combustion turbines (CTs) and Cherokee.

33. First, UCA asserts that that Public Service was imprudent in its failure to ensure a sufficient supply of coal during the latter half of 2022.³¹ According to UCA, Public Service “could have, and should have, performed certain functions better before and during the 2022 coal shortage.”³² UCA contends that “railroad staffing issues dated back to 2020, [] railroad supply chain issues persisted all throughout calendar year 2021,” and train cycle times deteriorated in the fourth quarter of 2021.³³ Given these facts, UCA argues that Public Service should have “evaluate[d] whether to increase its target inventory levels at Comanche and Pawnee as a way to prepare for possible delivery disruptions” earlier than it did.³⁴ Public Service’s requests to

³⁰ *Id.* at 15; Hearing Exhibit 104 at 17:12-20 (Boughner Settlement Testimony) (“In cases where there is need for a generation in a particular geographic area, also called a ‘local reliability need,’ a generator may be treated as ‘must-run’ in the unit commitment process. The ‘must-run’ treatment of specific generators helps ensure that sufficient generation is committed where needed to maintain reliable operation of the Bulk Electric System (‘BES’). Local reliability requirements and generator ‘must-run’ instructions are determined by Public Service’s Transmission Operations and Real Time Planning groups.”).

³¹ UCA’s SOP at 3.

³² *Id.* at 4 (emphasis removed).

³³ *Id.* at 8-9.

³⁴ *Id.* at 9.

BNSF Railway (BNSF) in May, 2022, or June, 2022, to add an additional train set for deliveries to Pawnee, and to Union Pacific Railroad (UPRR) for coal transportation assistance on August 18, 2022, were too little, too late to mitigate the unfolding crisis.³⁵ Under these circumstances, approval of the Settlement Agreement would “impermissibly relieve[] [Public Service] of its obligation to plan and operate prudently, and therefore is not just, reasonable, or in the public interest.”³⁶

34. Second, UCA contends that Public Service reasonably could have and should have dispatched its generating units in a more cost-effective way that would have saved more than \$13 million of the Company’s claimed costs.³⁷ As support, UCA states that “[e]conomic dispatch generally means that lower cost units are dispatched (operated) first” and “[e]conomic dispatch results in the lowest and most cost-effective cost of generation and noneconomic dispatch results in higher generation costs.”³⁸ As a general matter, as shown by the following graphic of Public Service’s “dispatch stack,”³⁹ Public Service’s coal units (Comanche, Craig, Hayden, and Pawnee) have the lowest generation costs, its combustion turbine units and Cherokee 4 have the highest generation costs, and its combined cycle units are in the middle.

³⁵ *Id.* at 9-10.

³⁶ *Id.* at 10-11.

³⁷ UCA’s SOP at 3.

³⁸ *Id.* at 11.

³⁹ Hearing exhibit 200, Rev. 1 at 22 (Figure CN-1) (Settlement Testimony of Mr. McNeil).



The dispatch adders implemented by Public Service starting in August 2022 increased the operating cost of the coal generating units and forced its modeling software to reorder the dispatch stack,⁴⁰ which UCA contends “meant that Comanche and Pawnee could not be used as much as economic dispatch would have dictated.”⁴¹

35. UCA contends, however, that “based on [Public Service’s] own information that was available at the time, [Public Service] reasonably could have and should have used the lowest-cost units remaining in the dispatch stack to replace the Comanche and Pawnee generation to the maximum extent possible.

⁴⁰ Hearing Exhibit 102 at 23:9-16. (Direct Testimony of Mr. Failer).

⁴¹ Hearing Exhibit 200, Rev. 1 at 11-12 (Settlement Testimony of Mr. McNeil).

36. It did not.”⁴² Specifically, UCA contends that the Craig and Hayden coal generation units could have and should have been run at higher capacity factors during the August, 2022, to December, 2022, timeframe, which would have resulted in \$5.6 million in savings.⁴³ Similarly, Public Service replaced generation from Comanche and Pawnee with generation from combustion turbine plants and Cherokee 4 when the combined cycle plants were ready and able to replace the lost generation for approximately \$7.4 million less.⁴⁴

37. Third, UCA asserts that its proposed disallowances should be adopted by the Commission because Public Service refused to run its licensed GenTrader modeling software using inputs identified by UCA. UCA argues that utilities like Public Service must be forced to include in their direct cases the inputs and assumptions used with their modeling software that generate the conclusions that serve as the basis for the utilities’ requests of the Commission in their applications or advice letter filings. Utilities like Public Service do not currently do so, and then refuse to run their modeling software using intervening parties’ proposed assumptions and inputs. The result is a manipulation of the cost recovery process that is contrary to the public interest because the Commission is forced to make decisions without all relevant evidence. In this proceeding, UCA requests that its proposed disallowances be granted because of Public Service’s refusal to run GenTrader with UCA’s proposed inputs and assumptions. At a minimum, “UCA asks the Commission to ignore all statements in the record that characterize UCA’s analyses as simplistic and statements that oppose UCA’s disallowances based on assumptions as to what the model would have shown.”⁴⁵

⁴² *Id.* at 13.

⁴³ UCA’s SOP at 14-18.

⁴⁴ *Id.* at 18-22.

⁴⁵ *Id.* at 5.

VI. ANALYSIS

A. Analytical Approach

38. In rendering this Decision, the ALJ has carefully reviewed and considered all the evidence introduced by the Parties during the hearing, including the testimony and hearing exhibits, even if this Decision does not specifically address all of the evidence presented, or every nuance of each party's position in each issue. Moreover, the ALJ has considered all the legal arguments set forth in the SOPs, even if the Decision does not explicitly address every legal argument. In rendering this Decision, the ALJ has weighed the evidence and evaluated the credibility of all the witnesses and hearing exhibits.⁴⁶

B. Burden of Proof

39. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon "the proponent of an order."⁴⁷ As the parties to the Settlement Agreement, Public Service and Staff bear the burden of proof.⁴⁸ Public Service and Staff must establish by a preponderance of the evidence that the Settlement Agreement is just and reasonable and in the public interest. The evidence must be "substantial evidence," which is defined as "such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury."⁴⁹ A party has satisfied its burden under this standard when the evidence, on

⁴⁶ 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).

⁴⁷ § 24-4-105(7), C.R.S.

⁴⁸ Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

⁴⁹ *City of Boulder v. PUC*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. PUC*, 949 P.2d 577, 585 (Colo. 1997)).

the whole, tips in favor of that party. The Commission has an independent duty to determine matters that are within the public interest.⁵⁰

C. Findings and Conclusions

40. Public Service experienced a decrease in coal deliveries to its Colorado-based coal generating power plants in 2022 resulting from reduced staffing at Class I railroad carriers due to the COVID-19 pandemic and prolonged low natural gas prices. Reduced rail service depleted coal stockpiles at the Affected Coal-Fired Power Generating Facilities (Comanche 1-3, Pawnee, and Craig Generating Stations 1-2) in a 90-day period beginning in June of 2022.⁵¹ While the railroad employment issues and resulting in decreased coal deliveries were national in scope, Public Service's coal-fired generating plants faced heightened challenges with coal supply. Specifically, only BNSF can deliver coal to Pawnee, and only BNSF can access the two coal mines that supply Comanche.⁵² As a result, Public Service had limited options in attempting to replace the decreased coal deliveries by rail.

41. On June 1, 2022, Public Service's coal inventory levels were above typical levels. However, the inventory situation deteriorated over the next three months.⁵³ Specifically, the inventory at Comanche and Pawnee decreased 145,000 tons in June, 329,675 tons in July, 2022, and 204,775 tons in August, 2022, totaling 679,450 tons over the three-month period.⁵⁴ By the end of summer 2022, Public Service had approximately 30 days of inventory at Pawnee and 28 days of inventory at Comanche, which was below Public Service's target of 35 and 40

⁵⁰ See *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

⁵¹ Hearing Exhibit 102 at 11:6-10 (Direct Testimony of Mr. Failer).

⁵² *Id.* at 11:11-13:14.

⁵³ *Id.* at 19:6-10.

⁵⁴ *Id.* at 20:14-18.

days for Comanche and Pawnee, respectively.⁵⁵ Public Service's policy was to build up its coal stockpiles to 120 percent of the targets during the fall shoulder months before the peak season.⁵⁶ However, not only did Public Service believe it would not be able to fulfill that policy during the fall 2022 shoulder season, it projected that Comanche and Pawnee would run out of coal in early December 2022 and early January 2023, respectively.⁵⁷

42. Public Service requested BNSF in May, 2022, or June, 2022, to provide an additional rail set to assist with coal deliveries to Pawnee.⁵⁸ BNSF initially denied the request, but added a rail set for Pawnee service in October, 2022.⁵⁹ Public Service also requested that UPRR increase deliveries of coal to Comanche on August 18, 2022, which was six days, and one day after Public Service placed dispatch adders on the Pawnee and Comanche units, respectively.⁶⁰ UPRR declined the request because it was "experiencing [] crew retention issues."⁶¹

43. As a result of its deteriorating coal stockpiles and its projection that Comanche and Pawnee would run out of coal during early in the 2022/2023 hearing season, Public Service implemented measures to reduce coal burn, and thereby conserve coal supplies, at the Affected Coal-Fired Power Generating Facilities, beginning in August 2022.⁶² As noted above, Public Service implemented dispatch adders to: (a) the Pawnee Generating Station on August 12; (b) Comanche Units 1 and 2 on August 17, 2022 and then changed the adders on September 13,

⁵⁵ Transcript of Oct. 12, 2023 Hearing at 68:8-70:5.

⁵⁶ *Id.* at 69:12-17.

⁵⁷ Hearing Exhibit 102 at 20:18-20-21 (Direct Testimony of Mr. Failer).

⁵⁸ Hearing Exhibit 102 at 16:6-16 (Direct Testimony of Mr. Failer); Transcript of Oct. 12, 2023 Hearing at 72:5-77:16.

⁵⁹ Hearing Exhibit 102 at 16:6-16 (Direct Testimony of Mr. Failer).

⁶⁰ UCA's SOP at 10; Transcript of Oct. 12, 2023 Hearing at 84:8-19.

⁶¹ Hearing Exhibit 102 at 16:1-5 (Direct Testimony of Mr. Failer); Transcript of Oct. 12, 2023 Hearing at 77:25-78:9, 80:24-84:23.

⁶² Hearing Exhibit 102 at 10:17-11:3 (Direct Testimony of Mr. Failer).

2022; and (c) Comanche Unit 3 on September 16, 2022.⁶³ Public Service also put into place coal conservation measures for its 20 percent share of the generation of the Craig Generating Station.⁶⁴ Specifically, on August 19, 2022 and September 1, 2022, Public Service increased the fuel price used in its modeling software for generation at Craig 1 and 2, respectively, from the price contained in long-term coal supply contracts to the then-current spot-market prices.⁶⁵

44. The coal dispatch adders at Comanche and Pawnee, and the increased assumed fuel price at Craig, reduced generation from Public Service's coal-fired electric generating facilities without requiring Public Service to declare any unit unavailable, which could have impacted system reliability.⁶⁶ Public Service removed the higher assumed fuel prices and reinstated long-term contract pricing for the Craig facility on October 1, 2022.⁶⁷ Public Service then removed the Pawnee adders on October 10, 2022, when BNSF added an additional rail set to serve the location. On December 1, 2022, Public Service removed the adders applied to Comanche 3 after BNSF added an additional rail set to service Comanche Station on November 15, 2022. Finally, Public Service removed the dispatch adders assigned to Comanche 1 when the unit was retired on December 31, 2022, and assigned to Comanche 2 on March 22, 2023.⁶⁸

45. UCA argues that Public Service should have taken measures before June 2022 to grow its coal stockpiles in light of the railroad staffing and delivery issues starting in 2020. As stated by UCA,

[Public Service] witness Marc Failer testified that railroad staffing issues dated back to 2020, and railroad supply chain issues persisted all throughout calendar year 2021. Compounding these issues were elevated

⁶³ *Id.*, Attach. MEF-4.

⁶⁴ *Id.* at 23:3-8.

⁶⁵ *Id.*, Attach. MEF-4.

⁶⁶ *Id.* at 23:17-22.

⁶⁷ *Id.* at 23:3-8.

⁶⁸ *Id.* at 24:20-25:14.

(or deteriorated) train cycle times, beginning in Q4 2021. As PSCo was aware, elevated cycle times meant a greater length of time between coal deliveries, so that even if the same amount of coal was delivered each time, the less frequent deliveries would result in a lower coal inventory. Mr. Failer testified that cycle times did not ever normalize and remained elevated throughout all of 2022. Despite these compound coal delivery issues (railroad staffing, railroad supply issues, elevated cycle times), [Public Service] did not ever evaluate whether to increase its target inventory levels at Comanche and Pawnee as a way to prepare for possible delivery disruptions. As such, the record reflects that [Public Service] was aware that the coal inventories at two of its large, low-cost generation stations, Comanche and Pawnee, were threatened by persistent rail issues, but [Public Service] did not take any early actions to secure coal inventories at these plants.⁶⁹

46. The record reflects that coal supply challenges were not unique to Public Service in 2022. A survey conducted by the National Coal Transportation Association indicated that 38 of the 45 utility respondents noted severe impacts to coal deliveries and inventory levels in 2022.⁷¹ There is no evidence, however, that a utility peer of Public Service took additional measures to grow its coal stockpiles at or above normal levels in advance of the 2022/2023 heating season due to the decreasing frequency of rail deliveries and decreasing railroad employment.⁷²

47. In addition, the record reflects that, while Public Service's coal stockpiles declined during the 2021//2022 peak winter heating season,⁷³ they rebounded by June 1, 2022, to 157 percent and 134 percent of the non-peak season targeted inventory at Comanche and Pawnee, respectively.⁷⁴ The targeted inventory at the beginning of the peak summer and winter seasons is 120 percent of the target for non-peak season.⁷⁵ Under both standards, the coal

⁶⁹ UCA's SOP at 8-9.

⁷⁰ Hearing Exhibit 102 at 11:6-13:14 (Direct Testimony of Mr. Failer).

⁷¹ Transcript of Oct. 12, 2023 Hearing at 71:24-72:4.

⁷² Hearing Exhibit 102 at 13:15-14:2 (Direct Testimony of Mr. Failer).

⁷³ *Id.* at 19:5-10.

⁷⁴ *Id.* at 20:1-9.

⁷⁵ UCA's SOP at 8-9.

inventory as of June 1, 2022 exceeded the targeted inventory. Accordingly, the ALJ finds that the record does not support UCA's assertion that Public Service unreasonably failed "to take early action to secure coal inventories at" Comanche and Pawnee.⁷⁶

48. The ALJ also finds that, based on the information available at the time, Public Service acted reasonably in implementing the dispatch adders, thereby reordering the dispatch stack and resulting in the decreased use of coal-fired generation. The record reflects a substantial decline in coal inventory from June 1, 2022 to August 1, 2022.⁷⁷ The record also establishes that running out of coal at any point, but particularly during the 2022/2023 heating season, was not an option due to the resulting risk to the reliability of Public Service's system.⁷⁸ Public Service's reasonable actions allowed its coal inventory at the Comanche and Pawnee facilities to rebound to satisfactory levels by December 2022. As a result, Comanche and Pawnee were fully available for deployment during Winter Storm Elliott that took place later in December, 2022. This, in turn, "relieved pressure on the natural gas system to provide fuel both for generation and Local Distribution Company consumption" during the storm."⁷⁹

49. Conversely, UCA has not established that its proposed alternative actions would have lowered costs and avoided creating unacceptable risk to system reliability. To be sure, Public Service asserts its decisions from August, 2022, to December, 2022, were reasonable, based at least in part, on the analysis of the system-optimization modeling software employed by

⁷⁶ UCA's SOP at 8-9.

⁷⁷ Hearing Exhibit 102 at 20:14-18 (Direct Testimony of Mr. Failer); Transcript of Oct. 12, 2023 Hearing at 68:8-70:5.

⁷⁸ Hearing Exhibit 102 at 27:16-29:4 (Direct Testimony of Mr. Failer).

⁷⁹ *Id.* at 26:21-27:10.

Public Service (GenTrader and Plexos).⁸⁰ Public Service uses the GenTrader software both to develop short-term plans to commit generation resources in the most optimal way possible, but also to do historical analysis. Plexos is employed by Public Service for longer-term forward-looking projections and estimates of forecasted costs and operations of its electric generation system.⁸¹ Both are licensed products, and the UCA cannot afford the licensing fees required to use them.⁸²

50. Public Service used both software modeling systems to validate its actions from August, 2022, to December, 2022.⁸³ Public Service also used the software to develop its arguments justifying its request to recover the \$37.6 million in Coal Displacement Power Costs identified in the Settlement Agreement. Yet, Public Service refused UCA's request in discovery to run the GenTrader modeling software with inputs and assumptions supplied by UCA to test Public Service's conclusions. UCA did not make the request until August 25, 2023.⁸⁴ On September 11, 2023, Public Service objected and declined to answer, on the basis that the requested information did not exist and would require a "special study" by Public Service.⁸⁵

⁸⁰ Joint SOP at 7-8 ("The costs at issue in this proceeding are the displacement power costs that resulted from these coal conservation measures, totaling approximately \$37.6 million. The modeling in support of this amount and Company witness Mr. Boughner's testimony at hearing reinforced that the Company operated the system economically and efficiently through the use of these adders while managing coal supply constraints."); 18 ("[T]he modeling performed and provided by Public Service reinforces that it operated the system economically while managing coal inventories, as both Company witness Mr. Boughner and Staff witness Mr. Abiodun reinforced at hearing.").

⁸¹ Transcript of 10/12/2023 Hearing at 28:14-31:7.

⁸² *Id.* at 171:17-172:1.

⁸³ Hearing Exhibit 102 at 26:16-18 (Direct Testimony of Mr. Failer) (Public Service's "request is the product of a "detailed analysis" conducted with the GenTrader modeling software "using inputs that reflected actual fuel prices, actual loads, actual generation, unit availability, renewable generation, and market activity."); Public Service's SOP at 8 (the GenTrader analysis establishes that Public Service "operated the system economically and efficiently."). *See also* Application at 1 n.1 ("In this instance, the Company used dispatch adders (including a fuel adder) to reorder the dispatch stack economically in order to conserve critical coal inventories by reducing coal burn.").

⁸⁴ Hearing Exhibits 302-307. *See also* Hearing Exhibit 105 (UCA propounded discovery on August 25, 2023 requesting Public Service to identify its inputs and assumptions used in conducting its GenTrader modeling runs referenced in its direct case; Public Service timely responded on September 11, 2023, ten days before UCA's deadline to file testimony in opposition to the Settlement Agreement).

⁸⁵ Hearing Exhibits 302-307.

UCA did not file a motion to compel Public Service to provide the information UCA requested, perhaps because UCA's testimony in opposition to the Settlement Agreement was due a mere 10 days later on September 21, 2023.⁸⁶

51. At the hearing, Public Service speculated that, had it run the modeling with UCA's inputs and assumptions, the results likely would have supported Public Service's conclusion that it operated reasonably and prudently.⁸⁷ The ALJ has not given any weight to this testimony for two reasons. First, because Public Service failed to run the GenTrader model using UCA's assumptions and inputs, the testimony is based on speculation.⁸⁸ Second, having refused to provide the information sought by UCA, it would be unfair to accept Public Service's self-serving speculation about the results of the model run(s) that it did not perform.

52. Similarly, the ALJ has not given any weight to Public Service's characterization of UCA's analysis as overly simplistic. Given Public Service's refusal to provide the information sought by UCA, it is unsurprising that UCA's analysis of Public Service's actions from August, 2022, to December, 2022, is less robust than Public Service's computer-modeled analysis. After careful review, the ALJ finds Public Service's analysis more persuasive.

53. Finally, the ALJ is disappointed that the results of the runs of the GenTrader modeling software using UCA's inputs and assumptions are not in this record. However, it is not clear whether Public Service or UCA bears the most responsibility for that outcome. On the one hand, there are legitimate questions about Public Service's assertion that it does not have an

⁸⁶ Decision No. R23-0630-I issued on September 20, 2023.

⁸⁷ Transcript of October 12, 2023 Hearing at 20:15-21, 46:15-47:17, 50:1-53:19, 58:25-63:18; 60:163:19.

⁸⁸ See Colorado Rules of Evidence 402 ("Evidence which is not relevant is not admissible."); 602 ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter.").

obligation to run the GenTrader software with UCA's assumptions and inputs when Public Service's case is built around the results of the GenTrader modeling using Public Service's inputs and assumptions. On the other hand, UCA did not request Public Service to run the GenTrader software with UCA's inputs and assumptions until relatively late in the discovery process. Under these circumstances, it is understandable that UCA's analysis is simplistic compared to the model-based analysis presented by Public Service in support of the Settlement Agreement. The ALJ reminds the parties that they are responsible for building and presenting fulsome records upon which the Commission can render fully informed decisions that best serve the public interest.

D. Conclusions of Law

54. Based upon substantial evidence in the record as a whole, the ALJ concludes that Public Service and Staff have satisfied their burden of establishing that the Settlement Agreement is just and reasonable and is in the public interest. Specifically, Public Service and Staff have satisfied their burden of proving that the Settlement Agreement balances the interests of ratepayers and Public Service and is in the public interest. While the recovery of \$37.6 million is substantial, Public Service and Staff have established that Public Service took reasonable and prudent actions to address the coal inventory crisis in August to December 2022. The ALJ further concludes Public Service's agreement to forego over \$1.8 million in carrying costs provides a substantial benefit to its ratepayers.

55. In addition, the ALJ grants the request in the Settlement Agreement for a partial variance from the requirement in Decision No. C06-1379 that the prudence of ECA costs be addressed in an annual August 1 filing. Public Service filed that application on August 1, 2023, which initiated the ongoing Proceeding No. 23A-0394E, that addresses the prudence of

2022 ECA and Purchased Capacity Cost Adjustment (PCCA) costs. The Commission ordered Public Service in Decision No. C22-0830-I to file this proceeding to address the prudence of the 2022 Coal Displacement Power Costs. The ALJ concludes that the Commission did not want the 2022 Coal Displacement Power Costs addressed in Proceeding No. 23A-0394E. As a result, the requested variance is appropriate and shall be granted.

56. Finally, the prudence of the 2022 Coal Displacement Power Costs addressed and decided in this proceeding should not be addressed in Proceeding No. 23A-0394E, which is the 2022 ECA/PCCA prudence review proceeding. Prudence issues related to fleet performance not due to coal conservation during 2022 may be litigated in the PCCA proceeding. It would be inefficient and risk inconsistent decisions if the prudence of the 2022 Coal Displacement Power Costs were addressed/re-litigated in Proceeding No. 23A-0394E.

57. Accordingly, based on the foregoing, the ALJ will recommend that the Commission approve the Settlement Agreement.

VII. RECOMMENDED DECISION

58. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

VIII. ORDER

A. The Commission Orders That:

1. For the reasons stated above, the Non-Unanimous Comprehensive Settlement Agreement filed on September 7, 2023 as Hearing Exhibit 103, Attach. JRK-4 is approved, consistent with the discussion above.

2. The Non-Unanimous Comprehensive Settlement Agreement is attached to this Decision as Appendix A.

3. The Verified Application of Public Service Company of Colorado for Recovery of 2022 Coal Displacement Power Costs and Other 2022 Electric Commodity Adjustment Deferred Costs Pursuant to Decision No. C22-0830-I, as amended by the Non-Unanimous Comprehensive Settlement Agreement, is granted consistent with the discussion above.

4. Proceeding No. 23A-0215E is closed.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be made available to all parties in the proceeding, 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 will limit what the Commission can review if exceptions are filed.

6. Response time to any exceptions that may be filed is shortened to seven (7) days.

7. If exceptions to this 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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director