

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0563E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONVERSION OF PAWNEE GENERATING STATION FROM COAL OPERATIONS TO NATURAL GAS OPERATIONS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
APPROVING SETTLEMENT AGREEMENT WITH
MODIFICATIONS AND GRANTING APPLICATION**

Mailed Date: March 29, 2024

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I. STATEMENT AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision grants Public Service Company of Colorado’s (Public Service or the Company) above-captioned Application filed December 20, 2022 (Application) and the requested Certificate of Public Convenience and Necessity (CPCN), as modified by the Settlement Agreement filed October 26, 2023 (Agreement or Settlement Agreement); approves the Settlement Agreement with modifications; and closes the Proceeding.¹

B. Procedural History²

2. On December 20, 2022, Public Service filed the Application.

¹ In reaching this Decision, the Administrative Law Judge (ALJ) has carefully reviewed and considered all arguments and admitted evidence, including those discussed briefly or not at all. Although this Decision does not include significant discussion of Settlement Agreement terms to which no party objects, the ALJ has fully considered all relevant issues, including the impact on the public interest. Any requested relief not specifically granted is denied. In rendering this Decision, the ALJ has weighed the evidence and evaluated the credibility of all the witnesses and hearing exhibits. *See Durango Transportation, Inc. v. Pub. Utilis. Comm’n.*, 122 P.3d 244, 252 (Colo. 2005); *RAM Broadcasting of Colo., Inc. v. Pub. Utilis. Comm’n.*, 702 P.2d 746, 750 (Colo. 1985).

² Only the procedural history necessary to understand this Decision is included.

3. On February 7, 2023, the Application was deemed complete for purposes of § 40-6-109.5, C.R.S., by operation of Rule 1303(c)(III) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.³

4. In its Application, Public Service waived the statutory deadline for a final Commission decision to issue per § 40-6-109.5, C.R.S.

5. On December 22, 2022, the Commission provided public notice of the Application and established intervention deadlines.

6. On February 23, 2023, the Commission set this matter for a hearing; granted Public Service’s request to file Supplemental Direct Testimony; addressed Interventions; and acknowledged Public Service’s waiver of the statutory deadline for a final Commission decision to issue, per § 40-6-109.5, C.R.S.⁴

7. In addition to Public Service, the following entities are parties to this Proceeding: the Natural Resources Defense Council and Sierra Club (collectively, the Conservation Coalition); the Colorado Office of the Utility Consumer Advocate (the UCA); the Climax Molybdenum Company (Climax); and Colorado Public Utilities Commission Trial Staff (Staff).

8. On June 6, 2023, the Commission referred this Proceeding to an Administrative Law Judge (ALJ) for disposition by Decision No. C23-0375-I (Referral Order).⁵

9. With the parties’ input, the ALJ scheduled a hybrid evidentiary hearing for November 7 and 9, 2023, and established numerous procedural deadlines to accommodate the hearing.⁶

³ Decision C23-0130 at 7 (mailed February 23, 2023).

⁴ Decision No. C23-0130 (mailed February 23, 2023).

⁵ Decision No. C23-0375-I at 8 (mailed June 6, 2023).

⁶ Decision Nos. R23-0431-I (mailed June 29, 2023), R23-0542-I (mailed August 15, 2023), and R23-0643-I (mailed September 26, 2023).

10. On October 26, 2023, Public Service filed a Joint Motion to Approve Settlement Agreement and the Settlement Agreement. Public Service, Staff, and the Conservation Coalition are the signatories to the Settlement Agreement, while Climax does not oppose the Settlement Agreement.

11. On October 27, 2023, the UCA filed its Notice of Opposition to Settlement Agreement (the UCA's Opposition to Agreement), indicating in a single sentence that it opposes the Settlement Agreement.

12. The ALJ held the evidentiary hearing as noticed on November 7, 2023. All parties appeared. During the hearing, the following witnesses testified: Messrs. Michael Pascucci and Michael Boughner (on behalf of Public Service), Adam Gribb (on behalf of Staff), and Chris Neil (on behalf of the UCA). The following hearing exhibits and their associated attachments (including confidential and executable attachments) were admitted into evidence during the hearing: Hearing Exhibits 100-120; Hearing Exhibit 301; Hearing Exhibit 302, Rev. 1 (Hearing Exhibit 302); Hearing Exhibit 500; Hearing Exhibit 503; Hearing Exhibit 700, Rev. 1 (Hearing Exhibit 700); Hearing Exhibit 701 and Hearing Exhibit 800.⁷ Because the parties

⁷ Hearing Exhibit 800 is a pdf list of pre-filed exhibits that the parties indicated they may offer into evidence during the hearing; that list includes information necessary to identify the specific document to be offered, (such as the exhibit number, file date, and filing party) as it appears in the administrative record. During the hearing, most exhibits were presented, offered, and admitted into evidence by administrative notice using the excel version of Hearing Exhibit 800 with live links to the parties' pre-filed exhibits, as they appear in the administrative record in this Proceeding. This means that the pre-filed exhibit and attachment identified by file date and filer in Hearing Exhibit 800 (as they appear in the administrative record) were taken into evidence, in lieu of receiving an identical copy during the hearing. Numerous exhibits or attachments thereto listed in Hearing Exhibit 800 were not admitted by administrative notice but were electronically received into evidence through the parties' box.com folders during the hearing. Administrative support staff added these exhibits to the record on November 7, 2023. Those are: Hearing Exhibit 100; Hearing Exhibit 104, Attachment GJK-3, Rev. 1 (Hearing Exhibit 104, Attachment GJK-3); Hearing Exhibit 104, Attachment GJK-4, Rev. 1 (Hearing Exhibit 104, Attachment GJK-4); Hearing Exhibits 109-120; and Hearing Exhibits 503 and 800. Hearing Exhibit 501 was added to the record on November 7, 2023, but was not admitted into evidence.

concluded presenting their evidence on the first day of hearing, the ALJ vacated the November 9, 2023 hearing date.

13. On December 7, 2023, Public Service filed a Joint Statement of Position (SOP) on behalf of itself, Staff, and the Conservation Coalition (Joint SOP). That same day, the UCA filed its SOP (the UCA's SOP).

14. Climax did not file a SOP.

II. DISCUSSION AND FINDINGS

A. Relevant Law and Commission Guidance

15. The Commission has broad constitutional and statutory authority to regulate public utilities, including jurisdiction to enforce statutes affecting public utilities.⁸ Colorado public utilities must provide service “as shall promote the safety, health, comfort, and convenience” of its customers and the public, and that is in all respects “adequate, efficient, just and reasonable.”⁹

16. The Commission has specific authority over CPCN applications under § 40-5-101(1)(a), C.R.S. Under that statute, generally, a utility may not begin construction of a new facility, plant, or system, or extend the same without first obtaining a certificate from the Commission that the present or future public convenience and necessity requires or will require the construction or extension.¹⁰ In addition, Rule 3102(b) of the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3, includes numerous requirements for CPCN applications, such as: information on alternatives studied; costs for those alternatives; criteria used to rank or eliminate alternatives; and, as applicable, a report of prudent avoidance measures considered and justification for the measures selected.¹¹

⁸ Colo. Const. art. XXV; §§ 40-1-103(1)(a)(I); 40-3-102; 40-7-101, C.R.S.; *See Pub. Serv. Co. of Colo. v. Pub. Utilis. Comm'n*, 350 P.2d 543, 549 (Colo. 1960), *cert. denied*, 364 U.S. 820 (1960).

⁹ § 40-3-101(2), C.R.S.

¹⁰ § 40-5-101(1)(a), C.R.S.

¹¹ *See* Rule 3102(b)(I) to (IX), 4 CCR 723-3.

17. When exercising any power granted to it, the Commission must give the public interest first and paramount consideration.¹²

18. The Commission has identified the following guidelines for utility performance incentive mechanisms (PIMs):

- a clearly and unambiguously defined penalty/incentive structure;
- clearly and unambiguously focused on one or a small number of objectives that are not already the subject of an alternate PIM or preexisting incentive;
- parties should be able to clearly and unambiguously identify success or failure on the basis of predefined baselines and performance metrics;
- the utility should have control over factors determining its success or failure; penalties or incentives that scale with the degree of success or failure to achieve predefined metrics but not excessively punitive or lucrative and conforms to existing law;
- penalties or incentives whose magnitude is large enough to supersede other factors (*e.g.*, return on equity) so as to influence utility behavior;
- avoid gaming and unintended consequences, to the degree these can be anticipated; and
- complements and informs utility performance evaluation.¹³

19. As the proponents of an order, the parties to the Settlement Agreement bear the burden of proof by a preponderance of the evidence that the Agreement should be approved.¹⁴ This standard requires the fact finder to determine whether the existence of a contested fact is more probable than its nonexistence.¹⁵ The preponderance of the evidence standard requires substantial evidence, which is such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion.¹⁶

20. The Commission encourages settlement of contested proceedings.¹⁷

¹² § 40-3-101(1), C.R.S.; *Public Serv. Co. of Colo.*, 350 P.2d at 549.

¹³ Hearing Exhibit 109 at 141 (Decision No. C22-0459 in Proceeding No. 21A-0141E, the Company's 2021 ERP/CEP Proceeding, hereinafter Hearing Exhibit 109 or Decision No. C22-0459); Decision No. C22-0270 at 40 (mailed June 2, 2022) in Proceeding No. 21A-0096E.

¹⁴ § 24-4-105(7) C.R.S.; Rule 1500, 4 CCR 723-1.

¹⁵ *Swain v. Colorado Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

¹⁶ *City of Boulder v. Pub. Utilis. Comm'n.*, 996 P.2d 1270, 1278 (Colo. 2000), quoting *CF&I Steel, L.P., v. Pub. Utilis. Comm'n.*, 949 P.2d 577, 585 (Colo. 1997).

¹⁷ Rule 1408, 4 CCR 723-1.

21. The ALJ assesses the Settlement Agreement and Application with these principles and legal standards in mind.

B. Factual Background

22. The Application requests the Commission approve a CPCN so it may convert the Pawnee Generating Station (Pawnee) from coal to natural gas operations.¹⁸ Pawnee is a 505 megawatt (MW) net capacity coal-fired, steam-electric generating station that began commercial operation in 1981 and continues to be fully operational.¹⁹ The station consists of a single unit with an opposed, wall-fired Foster Wheeler Original Equipment Manufacturer boiler with a General Electric steam turbine/generator.²⁰ An air quality control system was installed in 2014 for the Clean Air Clean Jobs Act which includes a selective catalytic reduction and a dry-type scrubber.²¹ Pawnee is located near the town of Brush, Colorado in Colorado's eastern plains.²²

23. Pawnee's conversion will maintain its existing 505 MW capacity.²³ The Company intends to keep Pawnee in operation for the remainder of its useful life and retire the plant in 2041.²⁴ The Company explains that converting Pawnee to natural gas provides for a cost-effective option that reduces emissions and likely avoids some level of new investment in gas turbine(s) while maintaining a firm, reliable unit as increasing levels of variable renewable generation are added to Public Service's system.²⁵

24. The proposed conversion is a Coal Action Plan within Public Service's Clean Energy Plan (CEP) included in the Company's ongoing Electric Resource Plan (ERP) in

¹⁸ Hearing Exhibit 100 at 1, 7-8; Hearing Exhibit 101 at 33: 5-6.

¹⁹ Hearing Exhibit 101, 12: 19-20; Hearing Exhibit 102, 8: 2-3; 8: 13.

²⁰ Hearing Exhibit 102 at 8: 3-5.

²¹ *Id.* at 8: 5-7.

²² Hearing Exhibit 101, 12: 19-21; Hearing Exhibit 102, 7: 8-12.

²³ Hearing Exhibit 100 at 3; Hearing Exhibit 101 at 3: 5-7.

²⁴ Hearing Exhibit 101 at 15:4-6.

²⁵ *Id.* at 18: 5-8.

Proceeding No. 21A-0141E (hereinafter 2021 ERP/CEP). The Coal Action Plan for Pawnee was included in the Updated Non-Unanimous Partial Settlement Agreement (Updated ERP/CEP Settlement Agreement) in that Proceeding.²⁶ The Company explains that the 2021 ERP/CEP was a historic filing that allows it to reduce its carbon emissions by over 80 percent by 2030 as compared to 2005 emissions and to continue leading the transition to a clean energy future.²⁷ It submits that Pawnee's conversion will enable emissions reductions needed to assist both the Company and the state to achieve the state's ambitious emissions reductions targets.²⁸

25. In the 2021 ERP/CEP, the Commission approved, without modification, the Updated ERP/CEP Settlement Agreement's provision addressing the Coal Action Plan for Pawnee. Specifically, the Commission directed that for emission reduction purposes, the Company convert Pawnee from coal to natural gas operations no later than January 1, 2026, after the Company files a limited-scope CPCN application for the conversion within 90 days of the Commission's final Phase I decision in the 2021 ERP/CEP.²⁹ Under the approved terms of the Updated ERP/CEP Settlement Agreement, the limited scope CPCN application here must focus "solely on conversion costs" without an analysis of alternatives to conversion because it is a "follow-on CPCN to an approved resource plan."³⁰ In the 2021 ERP/CEP, the Company estimated that the costs to convert Pawnee would be approximately \$44 million.³¹ Since then, the Company updated this estimate to approximately \$83 million in capital costs, plus an additional \$4 million for an Allowance for Funds Used During Construction (AFUDC), for a total of approximately \$87 million.³²

²⁶ Hearing Exhibit 109 at 25, 29-30; Hearing Exhibit 110 at 21-22 (Updated ERP/CEP Settlement Agreement). *See* Hearing Exhibit 100 at 1-2; Hearing Exhibit 102, 8: 16-21.

²⁷ Hearing Exhibit 100 at 3.

²⁸ *Id.* at 3; Hearing Exhibit 101, 3: 7-8.

²⁹ *See* Hearing Exhibit 109 at 25, 29 (approving terms found in the Updated Settlement Agreement, Hearing Exhibit 110 at 21-22).

³⁰ Hearing Exhibit 110 at 22; Hearing Exhibit 109 at 29-30.

³¹ *See* Decision No. C23-0130 at 2-3.

³² Hearing Exhibit 104, 14: 1-3.

26. Those amounts are broken down as follows:

Current Estimated Conversion Costs

Cost Category	Total Estimated Cost
Boiler Conversion	\$34 million
Wastewater Treatment	\$32 million
Pipeline Interconnection	\$6.5 million
Direct/Indirect Labor	\$2 million
Risk Reserve for Boiler Conversion	\$3 million
Risk Reserve for Wastewater Treatment	\$3 million
Risk Reserve for Pipeline Interconnection	\$0.3 million
Risk Reserve for Direct/Indirect Labor	\$0.2 million
Overhead and Escalation	\$2 million
AFUDC	\$4 million
<u>Total without AFUDC</u>	<u>\$83 million</u>
<u>Total with AFUDC</u>	<u>\$87 million</u> ³³

27. Since the 2021 ERP/CEP, the Company clarified the scope requirements for the conversion and refined its cost estimate, including the risk reserve, based on a boiler study and wastewater characterization and treatability study (collectively, Studies).³⁴ The Studies also helped

³³ *Id.* at 14: 6-8 (Table GJK-SD-1). The risk reserve for each category was reduced from 25 to 8 percent based on the Studies discussed above. *Id.* at 14: 12-14.

³⁴ *Id.* at 6: 1-6.

clarify other engineering and emission aspects of conversion.³⁵ The boiler study (by Riley Power) evaluated the impact on emissions and boiler performance, equipment requirements, scope, turnkey costs to convert Pawnee, and provided insight on future capabilities to blend hydrogen up to 30 percent by volume in Pawnee's fuel supply.³⁶ The boiler study resulted in lower estimated risk reserves and lower line items (as compared to Direct Testimony estimates); current pricing for engineered equipment and design services for the necessary major equipment; and updated estimates for installation.³⁷ The wastewater study (by United Conveyor LLC) investigated the cooling tower blowdown water and developed options for a wastewater treatment system; determined flow rates and water chemistry; and analyzed water samples for an engineering study of the water balance to evaluate potential technology solutions to treat water, and to provide a cost-benefit analysis for the most effective solution.³⁸ The wastewater study resulted in an increase in most line items (based on more detailed information); a lower estimated risk reserve (as compared to Direct Testimony estimates); identifying a higher volume of influent water that has to be treated than what was originally evaluated; and determinations that the Company needs to use a technology with a higher recovery rate (which increased costs) and must add more design redundancy than originally planned to ensure reliable service.³⁹

28. Public Service acknowledges concerns that its cost estimate has significantly increased since it developed its initial cost assumptions as part of modeling for Phase I of the 2021 ERP/CEP, but notes that the Company was transparent in its Direct Testimony that certain studies were not yet complete, and that the Company had not finished gathering information needed to

³⁵ *Id.* at 6: 6-7.

³⁶ *Id.* at 6: 10-17. *See* Hearing Exhibit 104, Attachment GJK-3C, Rev. 1 (Hearing Exhibit 104, Attachment GJK-3C).

³⁷ Hearing Exhibit 104, 9: 18-23—10: 1-6.

³⁸ *Id.* at 6: 18-22—7:1-5. *See* Hearing Exhibit 104, Attachment GJK-4C, Rev. 1 (Hearing Exhibit 104, Attachment GJK-4C).

³⁹ Hearing Exhibit 104, 12: 8-22.

provide a complete and “CPCN-quality cost estimate.”⁴⁰ The Company notes that Staff agrees that there is no evidence of any intentional “bait and switch,” and that it never sought project approval based on a figure it knew was incorrect or lower than anticipated costs.⁴¹ The Company also points out the reality that inflation has increased at a historically high rate since it provided the original estimate, which impacted all facets of the conversion, including labor, materials, and transportation costs.⁴²

29. The Company does not seek an advance presumption of prudence for conversion costs, but instead asks that it recover all costs that it reasonably and prudently incurs for conversion, consistent with CPCN approval.⁴³

30. The Company anticipates that construction activities could begin in January 2025, and conclude within a 2025 installation cycle (depending on factors such as actual timing for equipment fabrication and receiving an air permit).⁴⁴ Public Service anticipates final tie-ins to the boiler during an anticipated planned outage during the fall of 2025, with Pawnee operational by the end of 2025.⁴⁵ This allows for Pawnee to be converted and in-service by January 1, 2026.

C. Findings as to Commission Jurisdiction and Scope of CPCN Proceeding

31. Because the Company’s Application seeks a CPCN so it may convert Pawnee from coal to natural gas operations, the ALJ concludes that the Commission has specific jurisdiction and authority over the Application and Proceeding here.⁴⁶ Ordinarily, a CPCN application must meet all the requirements in Rule 3102, 4 CCR 732-3. That is not the case here. Instead, the Commission

⁴⁰ Hearing Exhibit 105, 14: 15-19.

⁴¹ *Id.* at 14: 19-20—15: 1-2, citing Hearing Exhibit 701, 20: 1-9.

⁴² *Id.* at 15: 7-10.

⁴³ Hearing Exhibit 100 at 4.

⁴⁴ *See* Hearing Exhibit 102, 18: 11-22; Hearing Exhibit 102, Attachment GJK-1, Rev. 1 at 2-3 (Hearing Exhibit 102, Attachment GJK-1); Hearing Exhibit 104, 5: 20-23; 10: 14-15.

⁴⁵ Hearing Exhibit 102, 19: 2-4; Hearing Exhibit 104, 5: 20-23; Hearing Exhibit 106, 12: 17-19.

⁴⁶ Hearing Exhibit 100; § 40-5-101(1)(a), C.R.S.

approved the Updated ERP/CEP Settlement Agreement's provision for Pawnee's conversion to operate on natural gas; required this CPCN Application as a follow-on CPCN to an approved resource plan; and specifically limited the scope of the Application to conversion costs without an analysis of alternatives to conversion.⁴⁷ When the Commission referred this matter, it was aware that the Company's conversion costs had significantly increased as compared to the estimate provided in the 2021 ERP/CEP, but it did not alter its directives limiting the scope of this CPCN.⁴⁸ Based on the foregoing, the Commission's directives on the scope of this Proceeding exempt the Company from Rule 3102(b)'s requirements except for Rule 3102(b)(IV), which requires the Company to provide estimated costs for the conversion. Indeed, by approving Pawnee's conversion in the 2021 ERP/CEP, the Commission essentially concluded that the public convenience and necessity requires the conversion (*i.e.*, there is a public need for the project), and that conversion is the appropriate measure.

D. Unopposed Settlement Agreement Provisions⁴⁹

32. Public Service, Staff and the Conservation Coalition (Settling Parties) are the signatories to the Settlement Agreement. Although it did not join the Agreement, Climax does not oppose it.⁵⁰ The UCA opposes certain aspects of the Agreement, as explained in more detail below.⁵¹ For ease of reference, this Decision addresses the unopposed and opposed provisions under separate headers.

⁴⁷ Hearing Exhibit 110 at 22; Hearing Exhibit 109 at 29-30.

⁴⁸ Decision No. C23-0130 at 2-3.

⁴⁹ The Agreement includes numerous general provisions that are common in Commission settlement agreements. Hearing Exhibit 108 at 7-9. This Decision does not outline all of those provisions, as unnecessary.

⁵⁰ Hearing Exhibit 108 at 1.

⁵¹ The UCA's Opposition to Agreement at 1; the UCA's SOP at 6-9.

1. CPCN Application Approval and Nature of Agreement

33. The Settling Parties agree to recommend that the Commission approve the Company's CPCN Application, consistent with the changes that the Agreement requires.⁵² Similarly, they agree that the Settlement Agreement should be approved.⁵³

34. The Agreement is intended to represent a comprehensive resolution of this Proceeding, which addresses the Application for a CPCN to convert Pawnee from coal to natural gas operations consistent with the Coal Action Plan that the Commission approved in the 2021 ERP/CEP.⁵⁴

35. While the UCA argues that the Commission should include certain operational requirements (discussed later) when granting the requested CPCN, it generally agrees that Pawnee should be converted to natural gas operations and that a CPCN should be granted to facilitate that.⁵⁵ It raises no specific disputes as to the other Agreement terms discussed above.⁵⁶

2. Reporting

36. The Agreement requires the Company to include project status updates for the conversion through its annual ERP reporting, filed with the Commission on March 31 of every year per Rule 3648(a), 4 CCR 723-3.⁵⁷ Reporting will include project accomplishments, any issues or complications encountered, budget information, and project timeline updates as discussed in the Company's Direct Testimony.⁵⁸ The Company will file the information included in Section V(b)(i)

⁵² Hearing Exhibit 108 at 2.

⁵³ *Id.* at 7.

⁵⁴ *Id.* at 1-2.

⁵⁵ November 7, 2023 Hearing Transcript (11/7/23 Tr.), 217: 21-25—218: 1; the UCA's SOP at 20-21.

⁵⁶ *See* 11/7/23 Tr., 160: 3-25—224: 1-18 (UCA live witness testimony). *See generally*, the UCA's SOP and Opposition to Agreement.

⁵⁷ Hearing Exhibit 108 at 5.

⁵⁸ *Id.* at 5-6.

to (iv) of the Agreement within 90 days of a Commission decision granting the CPCN in this Proceeding, and the information listed in Section V(b)(v) of the Agreement by September 2024.⁵⁹

37. The Company submits that the reporting provisions are reasonable and in the public interest because the required reporting will provide stakeholders, parties, and the Commission with regular updates on project management status, timelines, costs, conversion status, and information to ensure the conversion is safe.⁶⁰ This is important given that the conversion project is not slated to begin for a while.⁶¹

38. The UCA supports the above reporting provisions.⁶²

3. Best Value Employment Metrics

39. The Agreement explains that best value employment metrics information was unknown when Public Service filed its Application.⁶³ Consistent with Rule 3102(f), 4 CCR 723-3 and § 40-2-129, C.R.S., the Company will obtain best value employment metrics information specified in Rule 3102(e) and § 40-2-129(1)(a)(I), C.R.S., from potential contractors through whatever means it uses to select contractors for project construction.⁶⁴ If one or more contracts are awarded for the proposed project, within 45 days after the last contract is awarded, the Company will file a status report in this Proceeding that includes the information obtained from each contractor with which the Company has entered into a contract (the selected contractor) as to how the selected contractor meets best value employment metrics.⁶⁵

40. During the hearing, the Company explained that this Agreement term is intended to address a concern that Staff raised in Answer Testimony about the Company's compliance with

⁵⁹ *Id.* at 6.

⁶⁰ 11/7/23 Tr., 30: 21-25—31: 1-18.

⁶¹ *See id.* at 29: 8-14; 31: 2-9

⁶² The UCA's SOP at 6-7.

⁶³ Hearing Exhibit 108 at 6.

⁶⁴ *Id.*

⁶⁵ *Id.* at 6-7.

regulatory and statutory best value employment metrics requirements.⁶⁶ The Company submits that this Agreement term is reasonable and in the public interest because it ensures compliance with regulatory and statutory requirements, and will provide the Commission and interested stakeholders information on the best value employment metrics assigned to or received out of the Company's contracting process.⁶⁷

41. The UCA supports these Agreement provisions.⁶⁸

4. Findings, Analysis and Conclusions

42. As discussed above, by approving Pawnee's conversion in the 2021 ERP/CEP as its Coal Action Plan, the Commission essentially concluded that the public convenience and necessity requires the conversion (*i.e.*, there is a public need for the project), and that conversion is the appropriate means to achieve reductions in carbon emissions. Despite being aware from the start of this Proceeding that the estimated conversion costs had significantly increased, the Commission did not alter its conclusions as to conversion, or otherwise expand the scope of this Proceeding to require the Company to present alternate measures.⁶⁹ No party argues that alternative measures should be considered, or that conversion is not the appropriate measure. For all these reasons, the ALJ approves the Agreement's term that a CPCN should be granted, and as indicated in the ordering paragraphs below, grants a CPCN for Pawnee's conversion from coal to natural gas operations.

43. The Agreement's reporting provisions build on the conversion timing accountability provisions (discussed later) by ensuring that stakeholders and the Commission are updated on conversion progress early and often. This reporting adds a helpful check on the

⁶⁶ 11/7/23 Tr., 31: 21-25—32: 1-3.

⁶⁷ *Id.* at 32: 17-25—33: 1-3.

⁶⁸ The UCA's SOP at 5. *See* 11/7/23 Tr., 219: 13-21.

⁶⁹ *See generally* Decision Nos. C23-0130 and C23-0375-I.

Company's conversion planning and progression. The best value employment metrics provisions ensure that the relevant regulatory and statutory requirements are met, which serves the public interest. For these reasons, those the Company provides (above), and because the provisions are unopposed, the ALJ finds the above Agreement terms are just, reasonable and in the public interest. As such, the ALJ approves the above Agreement terms.

E. Opposed Settlement Agreement Provisions

1. Conversion Timing

44. Section IV of the Agreement requires Public Service to advance the conversion as soon as possible while maintaining system reliability, resource adequacy, and reasonable cost, but no later than January 1, 2026.⁷⁰ The unit is expected to be out of service between 60 to 120 days. The Company will provide updated timeline expectations in its future reporting.⁷¹ If the outage persists beyond the current expected timeline due to unit conversion, the Company will provide an explanation in the subsequent ERP annual report and the subsequent ECA prudence review addressing the causes of the outage extension and impacts to customers, if any.⁷²

45. During the hearing, the Company explained that the Agreement's January 1, 2026 deadline arises from the Updated ERP/CEP Settlement Agreement in the 2021 ERP/CEP Proceeding and reiterated that the above Agreement provisions clarify that the Company will advance the conversion earlier only if it can do so cost-effectively, safely, and reliably.⁷³ The Company also clarified that with an in-service date of January 1, 2026, the conversion start date would be approximately September 1, 2025.⁷⁴ The Company submits that these provisions are reasonable and in the public interest because they allow further opportunities to reduce emissions

⁷⁰ Hearing Exhibit 108 at 5.

⁷¹ *Id.*

⁷² *Id.*

⁷³ 11/7/23 Tr., 18: 6-11; 28: 4-11.

⁷⁴ *Id.* at 28:14-17.

(a primary state goal), while allowing parties to maintain their rights to ask questions or oppose Company actions or operations.⁷⁵ The Company views the above provision as ensuring that it does not have the “blanket opportunity to do what it wants how it wants to do it.”⁷⁶

2. PIMs

46. Section II(d) of the Agreement includes a Cost Management PIM, a Timing PIM, and a Unit Efficiency PIM. Public Service will credit an amount equal to any earnings decrease it incurs under the PIMs to its electric retail customers or charge electric retail customers for an amount equal to any applicable earnings increase the Company receives under the PIMs, through a quarterly Electric Commodity Adjustment (ECA) filing, amortized over a 10-year period, after the conversion construction and accounting for such is complete.⁷⁷

47. The Settling Parties agree that the PIMs reflect the unique circumstances of the Application here and should not be viewed as precedential.⁷⁸ The Settling Parties believe the below PIMs are generally consistent with Commission-articulated PIM principles.⁷⁹

a. Cost Management PIM

48. The Agreement provides that conversion will be subject to a Cost Management PIM with a baseline of \$80 million (baseline) and a cost cap of \$88 million, subject to the Company bearing the burden to establish that extraordinary circumstances warrant recovery of any cost, including AFUDC, above that amount.⁸⁰ In such a circumstance, the Company must request that the Commission reconsider the design and/or application of the Cost Management PIM, Timing

⁷⁵ See *id.* at 28: 18-25—29: 1-2.

⁷⁶ *Id.* at 29: 2-4.

⁷⁷ Hearing Exhibit 108 at 4.

⁷⁸ Hearing Exhibit 108 at 4.

⁷⁹ *Id.* at 4-5.

⁸⁰ *Id.* at 2.

PIM, “and/or” the Unit Efficiency PIM.⁸¹ The Agreement provides that the Cost Management PIM’s dead band will be a symmetric five percent above and below the baseline.⁸²

49. Under the Agreement, if the Company incurs cost overruns above 105 percent of the baseline and up to the cap of \$88 million, it will be subject to an earnings reduction equal to 10 percent of those overruns.⁸³ Likewise, if the Company has any cost savings below 95 percent of the baseline, it will receive an earnings increase of 10 percent of those savings.⁸⁴

b. Timing PIM

50. The Timing PIM requires that if conversion is not complete by January 1, 2026, the Company will be subject to an earnings reduction of \$5,000 for each day conversion is not complete, beginning January 2, 2026.⁸⁵ This reduction is in addition to the potential non-recovery of incremental AFUDC incurred due to delayed project in-servicing, the cost of which is expected to exceed \$15,000 per day.⁸⁶ The Agreement provides that this provision is not intended to extend the January 1, 2026 deadline in the Updated ERP/CEP Settlement Agreement (approved by Decision No. C22-0459). Under this PIM, if the Company can complete conversion before May 31, 2025, it will receive an earnings increase of \$100,000.⁸⁷ And, if the Company can complete the conversion before January 1, 2025, it will receive an earnings increase of \$250,000.⁸⁸

c. Unit Efficiency PIM

51. The Agreement subjects the conversion to an Unit Efficiency PIM that is based on either the assumptions used in the Phase I ERP modeling or an updated value calculated after the

⁸¹ *Id.*

⁸² *Id.* at 3.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *See id.* The Agreement states this begins “after January 1, 2026.” *Id.* As implied above, the ALJ construes this to mean that the first day the \$5,000 earnings reductions may accrue is January 2, 2026.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

Pawnee Boiler Study (Boiler Study) is completed.⁸⁹ During the hearing, the Company explained that these two options were included in the Agreement because the Settling Parties did not have enough time to develop the kind of updated baseline initially contemplated.⁹⁰ The Company also explained that the assumptions used in the Phase I ERP uses “out-of-date” information that may not represent the best operating characteristics of the unit.⁹¹

52. The Agreement requires that for any updated value calculation, the Company will use the Boiler Study and unit dispatch assumptions to develop an average annual heat rate.⁹² The Company will provide this calculation to Staff and will confer on the methodology used to develop the Unit Efficiency PIM baseline.⁹³ The Agreement requires this calculation to be completed no later than September 1, 2025, and provides that testing will begin the first calendar year following in-servicing, and continue for two additional years thereafter.⁹⁴ During the hearing, the Company clarified that unit efficiency will be measured in the first full calendar year (January 1 to December 31) following conversion and for two additional years thereafter.⁹⁵ Using a full calendar year of data avoids skewed unit efficiency calculations that could result from a partial calendar year of data given that the heat rate calculation is dependent on factors such as temperature and other weather conditions.⁹⁶ If the actual unit performance calculation exceeds 105 percent of the Unit Efficiency PIM baseline, the Company will forgo any earnings increase resulting from the Agreement’s Cost Management and Timing PIMs in the associated year.⁹⁷

⁸⁹ *Id.* at 4.

⁹⁰ 11/7/23 Tr., 24: 14-20.

⁹¹ *Id.* at 24: 20-23.

⁹² Hearing Exhibit 108 at 4.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ 11/7/23 Tr., 81: 14-25—82: 1-4.

⁹⁶ *Id.* at 80: 14-25—81: 1-3.

⁹⁷ Hearing Exhibit 108 at 4.

3. Pawnee's Operations

53. The Settling Parties agree that Public Service is responsible for operating Pawnee in a prudent manner, (including its dispatch), and retains the discretion to do so as it deems appropriate.⁹⁸ The Settling Parties reserve the right to take any position in future Commission proceedings addressing such operations where such issues are analyzed, including annual ECA proceedings.⁹⁹

4. Arguments

a. The UCA's Arguments

54. The UCA does not object to the Agreement's requirement in Section II(d) that PIM credits for earnings reductions and earnings increases should be processed through the Company's quarterly ECA filings.¹⁰⁰ That said, the UCA opposes the majority of the other Agreement provisions discussed above. Starting with the Cost Management PIM, the UCA opposes the \$80 million baseline and recommends a \$67 million baseline.¹⁰¹ In support, the UCA argues that the baseline is substantially higher than the \$44 million estimate that the Commission relied upon in the 2021 ERP/CEP, and when deciding that the conversion should proceed as a limited-scope CPCN application.¹⁰² It explains that when the Commission referred this matter to an ALJ, it specifically requested input from parties on how to avoid doubling costs in the future, and directed the parties to incorporate protections against substantial cost increases in any PIM. This includes structuring a PIM that does not reward the Company for cost savings beginning from a point substantially higher than the previously presented cost estimates that the Commission relied upon

⁹⁸ *Id.* at 5.

⁹⁹ *Id.*

¹⁰⁰ The UCA's SOP at 4; 11/7/23 Hg. Tr., 175: 23-25—176: 1-5. *See* Hearing Exhibit 108 at 4.

¹⁰¹ The UCA's SOP at 6.

¹⁰² *Id.* at 10, citing Decision Nos. C23-0130 and C23-0375-I.

in the 2021 ERP/CEP.¹⁰³ The UCA argues that the Agreement's \$80 million baseline ignores the Commission's concern that conversion costs have nearly doubled from the estimates in the 2021 ERP/CEP and that approving this baseline will encourage the kind of "bait and switch" behavior that occurred here.¹⁰⁴

55. The UCA also asserts that the Agreement's \$80 million baseline violates several Commission principles for desirable PIMs, arguing, for example, that it is excessively lucrative for the Company to earn an incentive on costs that are nearly double those found by the Commission to be cost-effective.¹⁰⁵ It asserts that adopting the baseline means that the Company faces no consequences for its inaccurate cost forecast in the 2021 ERP/CEP, thereby negatively influencing future Company behavior.¹⁰⁶ The UCA argues that this also violates the Commission's principle that PIMs should complement utility performance evaluation because it ignores or rewards poor utility performance (presumably in creating the initial cost estimate).¹⁰⁷ For all these reasons, the UCA submits that the Agreement's \$80 million baseline is contrary to the public interest and should be rejected.

56. The UCA's recommended \$67 million baseline is a midpoint between the \$44 million estimate presented in the 2021 ERP/CEP and the \$89 million estimate the Company presented in Direct Testimony.¹⁰⁸ The UCA submits that this baseline will result in a PIM establishing expectations for the Company to tightly control costs going forward, and is a reasonable compromise between the initial estimated costs and those presented in this

¹⁰³ *Id.* at 10, quoting Decision No. C23-0375-I, ¶ 14.

¹⁰⁴ *See id.* at 11-12.

¹⁰⁵ *Id.*, citing 11/7/23 Tr., 176: 12-18; 177: 22-25—179: 1-4.

¹⁰⁶ *Id.* at 12-13, citing 11/7/23 Tr., 164: 23-25—165: 1-24; 176: 1-25—177: 1; 180: 3-19.

¹⁰⁷ *Id.* at 13, citing Hearing Exhibit 701, 8: 5-28—9: 1-15; Decision No. C22-0270 in Proceeding No. 21A-0096E; Decision No. C22-0459 in Proceeding No. 21A-0141E, ¶ 390.

¹⁰⁸ *Id.* at 13-14.

Proceeding.¹⁰⁹ The UCA also argues that this baseline responds to the Commission's expectations that it could rely on the Company's \$44 million estimate; concerns about costs doubling between ERP and CPCN proceedings; and stated desire not to reward the Company for the substantial cost increase.¹¹⁰

57. While the UCA supports the Cost Management PIM's \$88 million cost cap, it argues that the Commission should adopt a definition of "extraordinary circumstances" under which the Company may seek to recover more than the cost cap.¹¹¹ The UCA is concerned that leaving this term undefined or defining it too broadly enables Company to interpret extraordinary circumstances to include supply chain increases, inflation, and other business-as-usual cost increases.¹¹² Given the already substantial cost increase related to the conversion, the UCA suggests that these terms be limited to acts of God or circumstances arising to *force majeure* events, such as natural disasters, governmental or societal actions such as war, invasion, civil unrest, labor strikes, or a pandemic that significantly affects every day life (e.g., COVID-19 pandemic).¹¹³ The UCA highlights that during the hearing, the Company agreed that extraordinary circumstances should be limited to situations that are unforeseeable and outside the Company's control, such as the COVID-19 pandemic, or something like an unforeseeable shutdown of a manufacturing plant after the Company submits an order.¹¹⁴ The UCA objects to defining extraordinary circumstances as circumstances beyond the Company's control that were not reasonably foreseeable, arguing that

¹⁰⁹ *Id.* at 14.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 16. *See* Hearing Exhibit 108 at 2.

¹¹² The UCA's SOP at 16.

¹¹³ *Id.* at 7; 16.

¹¹⁴ *Id.* at 16, citing 11/7/23 Tr., 70: 24-25—73: 1-2.

this could include supply chain cost increases.¹¹⁵ The UCA argues that the definition should only include circumstances that are truly unexpected like a pandemic.¹¹⁶

58. For all these reasons, the UCA recommends that the Commission adopt the following definition of extraordinary circumstances for the Settlement Agreement:

Acts of nature, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, pandemics, quarantines, strikes, labor disputes and freight embargoes to the extent that such events were not the result of or where not aggravated by the acts or omission of Public Service.¹¹⁷

59. Although the UCA does not directly object to the Agreement's conversion timing provisions in Section IV, it objects to the Timing PIM in Section II(b), based at least in part, on provisions allowing for conversion before January 1, 2026.¹¹⁸ Given this, the portion of Section IV of the Agreement that allows for conversion before January 1, 2026 is deemed opposed for the same reasons the UCA objects to similar conversion timing provisions in the Timing PIM. Specifically, the UCA asserts that the "original plan" was to have low-cost renewable energy instead of Pawnee's generation, but that it appears that sufficient renewable generation will not be available in 2025 and may not be available in 2026.¹¹⁹ The UCA argues that with a shortfall in 2026, it will be difficult to meet load without continuing to run Pawnee or alternative fossil fuel sources.¹²⁰ The UCA elaborates that the conversion will result in Pawnee changing from a low-cost unit to a high-cost unit.¹²¹ Because low-cost renewable projects will not replace Pawnee's low-cost coal-generation capacity, higher-cost fossil fuel generation will make up the difference.¹²² As a

¹¹⁵ 11/7/23 Tr., 167: 13-19.

¹¹⁶ *Id.* at 167: 19-24.

¹¹⁷ The UCA's SOP at 16.

¹¹⁸ *Id.* at 7; 17-19. *See generally, id.*

¹¹⁹ The UCA's SOP at 18. The UCA relies on the Company's 120-Day Report in the 2021 ERP/CEP for the above propositions. *Id.* at 17.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

result, the UCA submits that low-cost renewable energy resources should be available to replace Pawnee's coal-fired generation capacity before conversion to avoid the higher costs associated with running Pawnee after conversion.¹²³ As such, the UCA argues that conversion should not occur prior to the fall of 2025.¹²⁴ For many of the same reasons, although the UCA supports the Timing PIM provision that penalizes the Company for missing the January 1, 2026 deadline for conversion, it objects to rewarding the Company for completing the conversion before the fall of 2025.¹²⁵

60. The UCA opposes the Unit Efficiency PIM because it believes it is ineffective.¹²⁶ The UCA explains that because the Unit Efficiency PIM does not yet include a definitive baseline, it does not enable the parties to identify success or failure, contrary to a Commission PIM principle.¹²⁷ The UCA also objects because the PIM's five percent deadband will not influence Company behavior regardless of the baseline ultimately established.¹²⁸ In support, it asserts that a typical heat rate for a plant like Pawnee is 10,500 BTUs per kilowatt hour (kWh), and that a five percent PIM deadband would set the penalty at 11,003 BTUs, which is within the range of performance of a power plant.¹²⁹ It argues that it is unlikely that the heat rate can rise above that

¹²³ *Id.* at 18; 11/7/23 Tr., 216: 6-25—217: 1-9. *See id.* at 170: 21-25. The UCA also argues that because the Company will have to rely on other fossil-fuel generation instead of the expected new renewable energy resources to replace the coal-fired generation at Pawnee after conversion, emission benefits from conversion will be less than expected. The UCA's SOP at 18.

¹²⁴ 11/7/23 Tr., 190: 3-10. In its SOP, the UCA states that it "opposes converting Pawnee prior to the fall of 2026 for several reasons [. . .]" The UCA's SOP at 17. During the hearing, the UCA's witness testified that the UCA recommends that Pawnee not be converted before the fall of 2025. 11/7/23 Tr., 190: 3-10. And, the UCA has not challenged the Commission's approval in the 2021 ERP/CEP that conversion should be complete by January 1, 2026. *See generally*, the UCA's SOP. Based on the foregoing, the ALJ construes the UCA's statement in its SOP that it objects to conversion before the fall of 2026 as a typographical error that should have referenced the fall of 2025.

¹²⁵ *See* the UCA's SOP at 17.

¹²⁶ The UCA's SOP at 19.

¹²⁷ *Id.*

¹²⁸ *See* 11/7/23 Tr., 174: 8-20.

¹²⁹ The UCA's SOP at 19; 11/7/23 Tr., 174: 5-11.

level, thus rendering the Agreement's Unit Efficiency PIM ineffective.¹³⁰ The UCA suggests that if the Commission wants to adopt an effective Unit Efficiency PIM, rather than setting a five percent dead band, the Commission should consult with technical experts to develop more meaningful expectations that will incent the Company's behavior.¹³¹

61. As to the Agreement's operational provisions in Section III, the UCA argues that instead of giving the Company "unfettered" discretion to dispatch Pawnee as it sees fit, the Commission should condition CPCN approval on the Company operating Pawnee as a high-cost peaking unit, consistent with economic dispatch principles.¹³² The UCA recommends that Pawnee should only be run when forecasts covering "a week or so" indicate high load or low renewable generation output.¹³³ In support, it argues that running Pawnee's anticipated natural gas operations before low-cost renewable resources are available, or in lieu of big combustion turbines will unnecessarily increase generation costs, contrary to the public interest.¹³⁴ The UCA points to no prior Commission decision imposing operational restrictions of the kind it suggests here.¹³⁵ The UCA characterizes its operational recommendation as "smart dispatch" rather than "stupid dispatch," and as not impacting the Company's ability to make operational decisions based on day to day circumstances.¹³⁶ In fact, the UCA agrees that the Company should be able to assess

¹³⁰ The UCA's SOP at 19; 11/7/23 Tr., 174: 11-12.

¹³¹ The UCA's SOP at 19-20.

¹³² *Id.* at 20, citing Hearing Exhibit 500, 10: 5-23. The UCA states that CPCN approval should be conditioned on the Company's "agreement" to operate Pawnee as discussed above. The Company does not agree to this. *See infra*, ¶¶ 70-74. As such, the ALJ treats the UCA's arguments as suggesting that the CPCN approval be conditioned on a *requirement* that the Company operate Pawnee as the UCA suggests.

¹³³ The UCA's SOP at 20.

¹³⁴ *Id.*, citing Decision No. R14-0911 at ¶ 64 (mailed August 1, 2014). The UCA does not identify the proceeding number for this Decision.

¹³⁵ *See id.* at 20-21 (noting that during the hearing, the ALJ asked a UCA witness if the UCA is aware of Commission precedent imposing operational restrictions of the nature the UCA suggests here, then commenting that while the Commission did not impose similar restrictions, it did award an \$8 million disallowance based on UCA testimony about the Company's dispatch decisions during Storm Uri, citing Decision No. C22-0413 at ¶¶ 53-53 (mailed July 14, 2022) in Proceeding No. 21A-0192EG. *See* 11/7/23 Tr., 211: 23-25—212: 1-14.

¹³⁶ 11/7/23 Tr., 210: 12-23.

generation resources based on live circumstances to ensure that it can provide reliable service.¹³⁷ Similarly, the UCA agrees that operational decisions are complex and involve assessing operational concerns every minute for each day of the year to select the appropriate mix of generation resources to maintain safe, reliable and cost-effective service.¹³⁸

b. Settling Parties' Arguments

62. The Settling Parties argue that the Agreement's PIMs are consistent with the evidence on the estimated conversion costs, the anticipated conversion timing, and the facility's operation; and with Commission PIM principles.¹³⁹ In the spirit of compromise and to recognize the increase from the initial cost estimate, the Company agreed to the \$80 million baseline for the Cost Management PIM, which is \$7 million less than the total cost estimate for conversion.¹⁴⁰ Applying the five percent dead band to the baseline, the Company would receive an earnings increase only if cost outcomes are below \$76 million, and an earnings reduction if cost outcomes are above \$84 million.¹⁴¹ During the hearing, the Company explained that by setting the baseline at \$80 million, the Company takes on additional risk beyond what it would traditionally agree to with a PIM baseline, that is, the budget or estimated costs for the CPCN.¹⁴² The Company also highlights that because the \$88 million cost cap is approximately only \$1 million greater than the current cost estimate, it also increases the risk that the Company may not recover all costs associated with the conversion (should it exceed the cost cap).¹⁴³ Taking on these additional risks

¹³⁷ *Id.* at 211: 15-22.

¹³⁸ *Id.* at 210: 12-19.

¹³⁹ Joint SOP at 5. *See* Hearing Exhibit 109, ¶ 390.

¹⁴⁰ Joint SOP at 7.

¹⁴¹ *Id.*

¹⁴² *See* 11/7/23 Tr., 21: 2-7.

¹⁴³ *See id.* at 21: 8-13.

is intended to protect ratepayers against potential cost increases, and puts the onus on the Company to truly manage construction costs.¹⁴⁴

63. The Settling Parties assert that the Cost Management PIM is consistent with Commission PIM principles because its structure is unambiguous; it sets a baseline that requires the Company to carefully manage expenses within a reasonable cost estimate; it is neither excessively punitive nor lucrative; and it has clearly defined parameters for success and failure.¹⁴⁵

64. The Settling Parties urge the Commission to reject the UCA's suggested \$67 million baseline as unsupported by the evidence. They explain that there is no evidence or record support that the conversion can be completed for \$67 million.¹⁴⁶ The Settling Parties assert that the UCA's proposed \$67 million baseline is an "admittedly" arbitrary midpoint between the initial estimate and the current one in an attempt to punish the Company for the increased cost estimate.¹⁴⁷ They submit that the Company provided extensive written and live testimony support for the estimate increase, including explaining the differences between the initial and current estimate and providing a detailed breakdown of the current construction budget.¹⁴⁸ The Settling Parties highlight that the UCA does not take issue with any line items, specifically address the current estimate, or provide any evidence that the estimate is inaccurate.¹⁴⁹

65. The Settling Parties also argue that the UCA's \$67 million baseline violates a number of Commission PIM principles, and simply seeks to punish the Company.¹⁵⁰ For example, the UCA's proposed baseline essentially guarantees that the Company will incur an earnings reduction even if it meets its current cost estimate. This amounts to a penalty even if the Company

¹⁴⁴ *Id.* at 21: 14-17.

¹⁴⁵ Joint SOP at 8.

¹⁴⁶ *Id.* at 9.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*, citing Hearing Exhibits 101 to 104; 11/7/23 Tr., 20: 1-25—21: 1-17.

¹⁴⁹ *Id.* See 11/7/23 Tr., 192: 14-25—194: 1.

¹⁵⁰ Joint SOP at 10.

keeps costs in line with its cost estimate, which is overly punitive and contradicts Commission PIM guidance.¹⁵¹ It would also deprive the Company of the ability to control its success or failure under the PIM given that there is no evidence that conversion can be completed for \$67 million (and the UCA offers no options for how that could be achieved).¹⁵² They argue that the UCA's proposed baseline also creates the risk of unintended consequences and is contrary to Commission objectives as to utility performance.¹⁵³ They explain that a \$67 million baseline requires the Company to complete the conversion at below-market costs to avoid a penalty, which is potentially contrary to the goal of building safe and reliable facilities using subject-matter experts and qualified contractors.¹⁵⁴ They argue that the UCA's baseline incentivizes the Company to look for extreme cost savings to avoid an earnings decrease.¹⁵⁵

66. As to defining extraordinary circumstances that would warrant recovery of costs above the Agreement's \$88 million cost cap, the Settling Parties agree that the terms mean circumstances that were not known and could not reasonably have been known by the utility when it developed its current cost estimate.¹⁵⁶ They submit this is consistent with previous Commission decisions addressing extraordinary circumstances.¹⁵⁷

67. As to the Timing PIM, the Settling Parties explain that it is consistent with the Updated ERP/CEP Settlement Agreement's requirement that Pawnee be converted no later than January 1, 2026.¹⁵⁸ The Timing PIM incorporates a \$5,000 per day earnings reduction if the

¹⁵¹ *Id.* at 9-10.

¹⁵² *Id.* at 10.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 7-8

¹⁵⁷ *Id.* at 8, citing Decision No. C19-0367 in Proceeding No. 18A-0905E; Decision No. C09-0184, ¶ 70 (mailed February 24, 2009) in Proceeding No. 08A-0436E; Decision No. C08-1153, ¶ 67 (mailed November 7, 2008) in Proceeding No. 07A-447E.

¹⁵⁸ *Id.* at 10.

conversion is not complete by January 1, 2026, in addition to the potential non-recovery of AFUDC that is expected to exceed \$15,000 per day.¹⁵⁹ As a result, the total potential per day impact is approximately \$20,000.

68. As to resource adequacy relating to conversion timing, the Settling Parties rely on Agreement language that allows the Company to complete conversion early only if it first meets resource adequacy and reliability thresholds.¹⁶⁰ The Settling Parties also rely on the UCA's testimony during the hearing admitting that early conversion will not lead to a capacity shortfall because Pawnee will have the same capacity after conversion as before.¹⁶¹ The Settling Parties assert that the UCA offered only speculative concerns (without studies or analysis) that completing conversion before 2026 could increase costs and result in less emission reductions than originally anticipated.¹⁶² They submit that the Timing PIM is a well-defined PIM that appropriately incentivizes the Company because it allows for early conversion only if resource adequacy and reliability thresholds are met; advances emissions reduction goals; and penalizes the Company for failing to complete conversion by January 1, 2026.¹⁶³

69. Turning to the Unit Efficiency PIM, the Settling Parties argue that it is consistent with Commission PIM principles and accomplishes important Commission objectives as to unit efficiency and operation after conversion.¹⁶⁴ They argue that the Commission should disregard the UCA's objection as to 105 percent range above the Unit Efficiency PIM baseline because the UCA provides no alternative range or description of what it would consider appropriate.¹⁶⁵

¹⁵⁹ *Id.* at 10-11.

¹⁶⁰ *Id.* at 11-12.

¹⁶¹ *Id.* at 16, citing 11/7/23 Tr., 216: 17; 218: 25—219: 1.

¹⁶² *Id.*, citing 11/7/23 Tr., 172: 6-8.

¹⁶³ *See id.* at 12.

¹⁶⁴ *Id.* at 13.

¹⁶⁵ *Id.*, citing 11/7/23 Tr., 173: 21-25—175: 1-22.

70. As to the Agreement's operational provisions, the Settling Parties explain that the provisions merely confirm the generally accepted principle that a utility has the flexibility to operate its resources in a reasonable and prudent manner as it deems fit (subject to prudence review).¹⁶⁶ They argue that the Commission should reject the UCA's suggestion that the Commission include operational restrictions as part of the CPCN process.¹⁶⁷ They assert that the UCA provides no study, report, analysis, or precedent to support this and that the UCA conceded that nothing in the Updated ERP/CEP Settlement Agreement conditioned Pawnee's conversion or operation on replacing that capacity with other generation sources.¹⁶⁸

71. The Settling Parties assert that the UCA acknowledged that renewable resources are subject to uncertain variables, including wind and sunshine, and failed to address the broader recognized premise for conversion that allows for available firm dispatch while increased renewable resources are added over time.¹⁶⁹ They rely on UCA testimony during the hearing agreeing that operational decisions are complex and involve assessing operational concerns every minute for each day of the year to select the appropriate mix of generation resources to maintain safe, reliable and cost-effective service.¹⁷⁰ The Settling Parties also highlight that the Agreement reserves the parties' right to object to the Company's Pawnee operation (post conversion) in the appropriate proceeding (ECA proceedings).¹⁷¹

72. The Company explains that it is a gross over-simplification to assume that a resource like Pawnee will not be needed even when short term forecasts predict there will be a period of low load and high renewable output and that the UCA's recommended operating

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 14.

¹⁶⁸ *Id.*, citing 11/7/23 Tr., 211: 23-25—212: 1-14.

¹⁶⁹ Joint SOP at 14.

¹⁷⁰ 11/7/23 Tr., 210: 12-19.

¹⁷¹ Joint SOP at 14-15.

limitation will materially affect its ability to prudently operate its system and address situations as they arise.¹⁷² The Company submits that a generation portfolio with a high percentage of renewable generation requires agility, and that arbitrarily constraining the Company's operation of a generating unit is not conducive to a reliable, effective transition to a low-carbon future.¹⁷³ The Company submits that a prudent unit commitment plan should incorporate some degree of flexibility to account for unforeseen changes in demand forecasts, renewable forecasts and generator availability.¹⁷⁴ Likewise, the Settling Parties explain that there are a number of factors that govern Pawnee's dispatch that are based on circumstances as they arise in real-time.¹⁷⁵ For example, the Company explains that some generation is intentionally left offline to provide offline operating reserves, and that it is often economic to leave certain "quick start" generators uncommitted and available to provide reserves because offline resources do not burn any fuel to provide those ancillary services.¹⁷⁶

73. Public Service bolsters its call for a prudent commitment plan for Pawnee by explaining that after conversion, Pawnee will require 48 to 72 hours of startup time, which means that the Company cannot quickly bring the unit online when renewable generation output declines significantly, and that it may be required to commit the unit in advance of system need to maintain reliability.¹⁷⁷ Renewable generation is inherently volatile and difficult to forecast with certainty.¹⁷⁸ The Company has over 5,400 MW of wind and solar capacity on its system, but experiences a daily variation of 4,000 MW or more routinely on renewable output from these resources.¹⁷⁹ The

¹⁷² Hearing Exhibit 107, 6: 6-9; 13: 8-11.

¹⁷³ *Id.* at 6: 10-13.

¹⁷⁴ *Id.* at 10: 9-11.

¹⁷⁵ Joint SOP at 14, citing Hearing Exhibit 107, 11: 8-23—13: 1-17.

¹⁷⁶ Hearing Exhibit 107, 10: 4-8.

¹⁷⁷ *Id.* at 12: 3-10.

¹⁷⁸ *Id.* at 12: 14-15.

¹⁷⁹ *Id.* at 12: 18-21.

Company leverages its available 2,000 MW of flexible peaking unit generation capacity that can be quickly turned on and dispatched to fill in drops in renewable generation.¹⁸⁰ When it needs more capacity, the Company uses larger, less flexible resources, such as Pawnee.¹⁸¹ If a resource like Pawnee is not started and online in advance of these drops in renewable production, Pawnee's capacity will not be available to provide customers with energy.¹⁸² This could lead to the Company having to secure replacement power at an even higher cost, or worse yet, being unable to secure sufficient resources, thereby risking system reliability.¹⁸³ While the Company anticipates that there will be periods when Pawnee can be reliably shut down, it continually evaluates the varying risks of doing so and cost-effective options to mitigate them.¹⁸⁴ For all these reasons, the Company submits that imposing limitations on running Pawnee as suggested by the UCA will ultimately drive-up costs and threaten reliability.¹⁸⁵

74. Objecting to the UCA's characterization of Pawnee as a "peaking unit" after conversion, the Company explains that Pawnee lacks the operational flexibility of a combustion turbine and has a nameplate capacity of 505MW, which is much higher than the standard 200 MW capacity of typical peaking units.¹⁸⁶ The Company anticipates that Pawnee's operation after conversion will be primarily influenced by the inflexibility of steam-electric generator operations, renewable forecast uncertainty, and the Company's commitment to operate Comanche 3 at lower capacity factors in future years with a targeted reduction in capacity factor to 30 percent or less in 2030 and beyond.¹⁸⁷

¹⁸⁰ *Id.* at 12: 21-23.

¹⁸¹ *Id.* at 12: 23—13: 1-2.

¹⁸² *Id.* at 13: 2-4.

¹⁸³ *Id.* at 13: 4-8.

¹⁸⁴ *Id.* at 13: 13-16.

¹⁸⁵ *See id.* at 13: 16-17.

¹⁸⁶ Hearing Exhibit 107, 11: 1-7.

¹⁸⁷ *Id.* at 11: 11-15.

5. Findings, Analysis and Conclusions

75. Starting with the Agreement's PIM provisions, for the reasons discussed below, the ALJ rejects the UCA's argument that the Commission should establish \$67 million as the baseline for the Cost Management PIM. The primary basis for this suggested baseline is the prior and outdated conversion cost estimate that the Company presented in the 2021 ERP/CEP, which was significantly lower than the one presented here. As such, the suggested baseline is not supported by evidence as to current conversion costs. The UCA does not dispute the accuracy of the current cost estimate, yet essentially argues that the Commission should not rely on it in establishing a baseline. Nor does the UCA suggest that the outdated cost estimate is more accurate than the current one. Instead, the UCA selected an arbitrary midpoint between the original and current cost estimate as the baseline for the Cost Management PIM. As a result, the UCA's baseline does not reflect an accurate and current assessment of the conversion costs based upon reliable evidence.¹⁸⁸ That is reason enough to reject the UCA's suggested baseline, but there is more.

76. Notably, given the lack of evidentiary support that the Company can convert Pawnee for \$67 million, establishing that as the baseline violates the PIM principle that the Company should have control over factors determining its success or failure.¹⁸⁹ Indeed, with a \$67 million baseline and a symmetric five percent deadband, the Company would have to convert Pawnee for \$70,350,000 or less to avoid a 10 percent overrun penalty and for \$63,650,000 or less to achieve an earnings increase. The evidence of the estimated conversion costs indicates that it is more likely than not that the conversion costs will exceed both of these amounts.¹⁹⁰ As a result,

¹⁸⁸ While it finds some basis in the evidence as to the Company's *original* cost estimate, this is not reliable evidence of the current costs to convert Pawnee given that the Company has essentially disavowed the original cost estimate and provided a more accurate one upon which it relies.

¹⁸⁹ *Supra*, ¶ 18.

¹⁹⁰ See Hearing Exhibit 104, 9: 16-23—10: 1-6; 12: 8-23—13: 1-4; 13: 20-22—14: 1-14; Hearing Exhibit 104, Attachment GJK-5C, Rev. 1 (Hearing Exhibit 104, Attachment GJK-5C); *supra*, ¶ 26.

with a \$67 million baseline, the Company would start the project with little control over its ability to succeed or fail, and a high likelihood that it will face significant overrun penalties. The result is a PIM that is less about incentivizing the Company's performance in managing conversion costs and is more about punishing the Company for the increase in its cost estimate. Indeed, the UCA's proposed baseline also violates the PIM principle that PIMs should not be excessively punitive.¹⁹¹ Given the lack of evidentiary support indicating that the conversion can be completed for \$67 million, the proposed baseline would create an excessively punitive PIM. What is more, if actual costs align with the estimated costs of \$83 million without AFUDC and \$87 million with AFUDC, the penalty the Company would pay under a \$67 million baseline could be substantial.

77. The UCA's proposed baseline also violates the Commission PIM principle that PIMs should avoid unintended consequences.¹⁹² To avoid a penalty under the UCA's proposed baseline, the Company would have to find a way to complete conversion at below-market costs. Setting aside the lack of evidentiary support that this can be accomplished, the baseline would inappropriately encourage the Company to look for extreme cost savings that may jeopardize its ability to build safe and reliable facilities using subject-matter experts and qualified contractors.

78. For all these reasons, the ALJ rejects the UCA's proposed baseline for the Cost Management PIM. That said, the ALJ is troubled by the significant increase in the conversion cost estimate, as highlighted in the Referral Order.¹⁹³ In the Referral Order, the Commission expressed interest in hearing from the parties as to a "correct cost baseline for a potential PIM that would not result in rewarding Public Service for cost savings beginning from a point substantially higher than the previously presented cost estimates."¹⁹⁴ The Settling Parties have identified \$80 million as that

¹⁹¹ *Supra* ¶ 18.

¹⁹² *Id.*

¹⁹³ Decision No. C23-0375-I at 5.

¹⁹⁴ *Id.* at 7.

baseline, which is substantially higher than the Company's initial cost estimate. As noted, the UCA's proposed \$67 million baseline is unsupported by evidence that the Company can complete conversion at or near that cost and violates several PIM principles. As it is, the \$80 million baseline is \$7 million less than the total cost estimate for conversion with AFUDC, and \$3 million less than the cost estimate without AFUDC. With the five percent deadband, the Company would only receive an earnings increase if actual conversion costs are under \$76 million and a penalty if actual conversion costs are \$84 million or more (up to the \$88 million cost cap). When considering that the total estimated costs are \$83 million without AFUDC and \$87 million with AFUDC, the \$80 million baseline already creates challenges for the Company to achieve an earnings increase or avoid a penalty. Thus, while the baseline allows the Company to receive an earnings increase for cost savings from a point that is substantially higher than the previous cost estimates, this does not mean that the Company will be able to achieve an earnings increase or avoid a penalty.

79. The ALJ agrees with the UCA that the Commission should define extraordinary circumstances in the context of the Agreement's Cost Management PIM. The UCA proposes a definition that, for the most part, is a list of specific circumstances that amount to extraordinary circumstances. The ALJ will adopt a definition that: (a) largely adopts the Settling Parties' suggested language with the addition that the Company must not be able to control the relevant circumstances;¹⁹⁵ (b) can be applied to any scenario; (c) lists the UCA's examples to illustrate the type of circumstances contemplated under the definition; and (d) explicitly states that cost increases typical in the ordinary course of business (such as standard inflation and supply chain issues) do not meet the definition. For all these reasons, the ALJ adopts the following definition of extraordinary circumstances as referenced in Section II(a)(i) of the Agreement:

¹⁹⁵ This acknowledges that the Company is expected to avoid increased costs when it is able to do so.

Extraordinary circumstances are circumstances over which Public Service has no control, and which it did not know and could not reasonably have known when it submitted its updated cost estimate through Supplemental Direct Testimony filed in this Proceeding. Examples include but are not limited to: acts of nature, acts of a public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, pandemics, quarantines, strikes, labor disputes and freight embargoes to the extent that such events were not the result of or were not aggravated by the acts or omission of Public Service. Cost increases typical in the ordinary course of business, such as increases resulting from inflation or supply chain issues, do not meet this definition.

80. This definition provides added protection to consumers and is appropriate based on the unique circumstances here where the estimated costs have substantially increased between the 2021 ERP/CEP and this CPCN.

81. With the changes discussed above, the ALJ finds that the Cost Management PIM establishes clear and unambiguous standards for earnings increases and reductions; clearly focuses on one or more objective not already the subject of another PIM; gives the Company control over factors determining its success or failure; is neither excessively lucrative nor punitive; and is otherwise consistent with Commission PIM principles.¹⁹⁶ For the reasons discussed, the ALJ approves the Cost Management PIM, as modified.

82. As to the Timing PIM and the Agreement's conversion timing provisions (in Section IV), the ALJ does not discount the UCA's concerns that converting Pawnee to natural gas operations before renewable resources are available may result in replacement energy costs that are higher than Pawnee's coal-fired generation. If Pawnee's conversion was being addressed exclusively in a standalone CPCN proceeding, such cost considerations could be relevant to an analysis of the alternatives for the chosen project, per Rule 3102(b)(VIII), 4 CCR 723-3. But here, the Commission has already determined that Pawnee should be converted to natural gas operations for carbon emission reduction purposes, and specifically directed that this Proceeding be a limited-

¹⁹⁶ *Supra*, ¶ 18.

scope CPCN that does not consider alternatives.¹⁹⁷ When the Commission approved Pawnee's conversion as its Coal Action Plan, it did not condition the timing of Pawnee's conversion on the availability of renewable generation resources to replace or equal Pawnee's coal-fired generation capacity.¹⁹⁸

83. Instead, Public Service's 2021 ERP/CEP comprehensively considered Pawnee's conversion within the larger context of the Company's overall resource planning, which inherently includes timing considerations for the Company's anticipated new or converted generation resources, including renewable generation. In that context, the Commission approved the Updated ERP/CEP Settlement Agreement's requirement that conversion be completed no later than January 1, 2026 without modification or conditions.¹⁹⁹ The Referral Order assigned this matter to an ALJ with directives to the parties relating to a potential PIM, but did not amend Decision No. C22-0459 or otherwise reconsider what the UCA calls the "original plan."²⁰⁰ For all these reasons, the ALJ will not disturb the Commission's 2021 ERP/CEP decision by altering the Commission's approved timing for Pawnee's conversion.

84. The ALJ finds that the Timing PIM is consistent with the approved conversion timeline in the 2021 ERP/CEP; establishes clear and unambiguous standards for earnings increases and reductions; clearly focuses on one or more objective not already the subject of another PIM; gives the Company control over factors determining its success or failure; is neither excessively

¹⁹⁷ See Hearing Exhibit 109 at 25 and 29 (approving terms in the Updated Settlement Agreement, Hearing Exhibit 110 at 21-22).

¹⁹⁸ See generally, *id.*

¹⁹⁹ *Id.* at 29 ("we agree with the Settling Parties that the [Agreement] provisions regarding . . . conversion dates for . . . Pawnee, as well as the provisions regarding the CPCN for Pawnee's conversion, should be adopted without modification."). See *id.* at 25 (discussion of Pawnee provisions). See Exhibit 110 at 21-22 (Updated Settlement Agreement establishing January 1, 2026 as the latest Pawnee conversion date, and that this CPCN be limited-scope).

²⁰⁰ Decision No. C23-0375-I at 5 and 7.

lucrative nor punitive; and is otherwise consistent with Commission PIM principles.²⁰¹ What is more, when viewed with the Agreement's timing provisions in Section IV, the Timing PIM reconfirms that the Company will not convert Pawnee earlier than January 1, 2026 unless it can maintain system reliability, resource adequacy, and reasonable cost.²⁰² The "reasonable cost" language in the Timing PIM operates to ensure that the Company does not incur unreasonable costs (such as costs above the current estimates) just so that it can convert Pawnee early and receive the \$100,000 or \$250,000 early conversion incentives. Other provisions in Section IV ensure accountability for extended unit outages and that the Company will provide updated timeline expectations as the project progresses, which serves the public interest.²⁰³ For all these reasons, the ALJ approves Section IV and the Timing PIM in Section II(b) of the Agreement without modification.

85. The Unit Efficiency PIM operates as an additional hurdle for the Company to receive earnings increases under the Cost Management and Timing PIMs. Indeed, if Pawnee's performance after conversion exceeds 105 percent of the Unit Efficiency PIM baseline (to be established), the Company cannot receive earnings increases under the Cost Management and Timing PIMs, even if it meets the requirements to receive an earnings increase under those two PIMs.²⁰⁴ This structure provides added incentive for the Company to ensure unit efficiency and may serve the public interest once the baseline is established. For these reasons and those discussed below, the ALJ finds that a Unit Efficiency PIM should be approved, albeit with different and added conditions (discussed below).

²⁰¹ *Supra*, ¶ 18.

²⁰² Hearing Exhibit 108 at 3-5.

²⁰³ *Id.* at 5.

²⁰⁴ *Id.* at 4 (Section II(c)).

86. The ALJ agrees with the UCA that at this time, the Unit Efficiency PIM fails to meet the Commission PIM principle that a PIM should allow parties to identify success or failure because it does not include the specific baseline value that will be used to measure success or failure.²⁰⁵ But the Agreement proposes to resolve this deficiency by September 1, 2025, which is before the January 1, 2026 conversion deadline.²⁰⁶ As a result, this deficiency is not fatal to the PIM and will be resolved before the PIM may be implemented.

87. The Agreement requires that the Unit Efficiency PIM baseline be developed using either the assumptions in the Phase I ERP modeling or an updated value calculated after the Boiler Study is complete.²⁰⁷ As noted, during the hearing, the Company explained that the assumptions in the Phase I ERP used “out-of-date” information that may not represent the best operating characteristics of the unit.²⁰⁸ Based on this, the ALJ finds that the evidence does not support allowing the Company the option to use the assumptions in the Phase I ERP to develop the baseline for the Unit Efficiency PIM. As such, this Agreement provision is rejected. This leaves the Agreement’s second option, that is, to develop the Unit Efficiency PIM baseline using an updated value calculated after the Boiler Study is complete.²⁰⁹ This approach ensures that the Unit Efficiency PIM baseline will be created using more up-to-date and accurate information from the Boiler Study, resulting in a baseline that reflects the actual operational characteristics of Pawnee’s new boiler.²¹⁰ For the reasons discussed, the ALJ approves this Agreement term.

88. Although the Agreement requires the updated calculation to be complete by September 1, 2025, it fails to include a process for the next steps after the calculation is complete.²¹¹

²⁰⁵ See *supra*, ¶ 18; Hearing Exhibit 108 at 4.

²⁰⁶ Hearing Exhibit 108 at 4-5.

²⁰⁷ *Id.* at 4.

²⁰⁸ 11/7/23 Tr., 24: 20-23.

²⁰⁹ Hearing Exhibit 108 at 4.

²¹⁰ See 11/7/23 Tr., 24: 17-25—25: 1-6; Hearing Exhibit 108 at 4.

²¹¹ See Hearing Exhibit 108 at 4.

As such, the ALJ modifies the Agreement to fill this gap. The Company will be required to file information explaining its updated calculation and methodology to develop the Unit Efficiency PIM baseline, along with the resulting baseline and performance metric no later than September 1, 2025. This is consistent with the timeline in Agreement. While the Agreement requires the Company to provide Staff this calculation and confer with Staff on the methodology used to calculate the baseline, it does not require the Company to do the same with the UCA. In the interests of transparency and to better enable both Staff and the UCA to evaluate whether the Unit Efficiency PIM baseline should be contested, the ALJ modifies the Agreement to also require the Company to provide the UCA its calculation and confer with the UCA on the methodology used to calculate the baseline before it files the information with the Commission (due on or before September 1, 2025). The Company's filing must also include a statement confirming that it made the required disclosures to Staff and the UCA, conferred with them both on the calculation, methodology and resulting baseline, and indicate whether Staff or the UCA contest the Unit Efficiency PIM baseline. The resulting baseline can be addressed as needed, based on subsequent filings.

89. The ALJ finds that with the above changes, the Unit Efficiency PIM meets Commission PIM principles that the utility have control over factors determining success or failure; that the PIM focus on a small number of objectives not already the subject of other PIMs and incentives, and that the PIM complement and inform the Company's performance evaluation.²¹² Once the baseline is established consistent with the above requirements, the structure of the Unit Efficiency PIM will meet or substantially comply with the remaining Commission PIM

²¹² *Supra*, ¶ 18.

principles.²¹³ For the reasons discussed, the ALJ approves the Agreement's Unit Efficiency PIM (Section II(c)), as modified.

90. The ALJ finds that the Company's quarterly ECA filings is an appropriate vehicle to implement the PIMs' earnings reductions and increases. Since earnings reductions under the Cost Management and Timing PIMs are unconnected to the Unit Efficiency PIM, the ALJ modifies the Agreement's ECA implementation terms (to the extent necessary) to clarify that earnings reductions may be credited to customers starting with the first quarterly ECA filing after conversion construction and accounting. Likewise, since earnings increases are dependent upon the Company's performance under the Unit Efficiency PIM, the ALJ modifies the Agreement's ECA implementation to clarify that earnings increases will be charged to customers starting with the first quarterly ECA filing after Pawnee's efficiency is determined, consistent with the Unit Efficiency PIM (as modified above).

91. Section II(d) of the Agreement also recommends that the Commission direct Public Service to implement any tariff changes necessary to effectuate the PIMs through a compliance advice letter. Due to the additional required process to establish the Unit Efficiency PIM baseline, the timing for determining Pawnee's efficiency, and therefore, whether the Company has earned an increase under the Cost Management and Timing PIMs, and the absence of *pro forma* tariff sheets showing proposed changes for a compliance filing, this provision is rejected. Instead, Public Service is required to file modified tariff sheets necessary to implement the PIMs using the quarterly ECA filings no later than September 1, 2025. Such tariffs must be filed in a separate

²¹³ *Supra*, ¶ 18. The ALJ rejects the UCA's suggestion that the five percent deadband for this PIM will not incent the Company, regardless of the baseline (and resulting performance metric) that is established. This argument is speculative.

proceeding on not less than 30 days' notice. For the reasons discussed, the ALJ approves Section II(d) of the Agreement, as modified.

92. Turning the Agreement's operational provisions in Section III, for the reasons discussed, the ALJ rejects the UCA's arguments. During the hearing, the UCA agreed that the Company should have operational control and the ability to assess generation resources based on circumstances as they arise.²¹⁴ Similarly, the UCA agreed that operational decisions are complex and involve assessing operational conditions every minute for each day of the year to select the appropriate mix of generation resources to maintain safe, reliable and cost-effective service.²¹⁵ At the same time, the UCA characterizes its operational recommendation as creating no difference to this approach, and as merely recommending that Pawnee's dispatch be "smart" and not "stupid."²¹⁶ This characterization is both inaccurate and an oversimplification of prudent generation dispatch decision-making. The UCA plainly asks the Commission to limit the Company's ability to make operational decisions based on daily circumstances because it seeks to restrict Pawnee's dispatch to a high-cost peaking unit that is only run when a forecast covering "a week or so" indicates high load or low renewable output.²¹⁷ The ALJ is unwilling to hamstring the Company to using Pawnee only in the manner that the UCA suggests. The UCA's recommendation assumes that there will be no circumstances under which a different dispatch than suggested may be necessary to serve the public interest and ensure reliable and safe service in a cost-effective manner. The Company provided credible reasons to support a different prudent dispatch than suggested, and to maintain the Company's ability to assess conditions as they arise when making dispatch decisions.²¹⁸ What

²¹⁴ See 11/7/23 Tr., 211: 15-22.

²¹⁵ *Id.* at 210: 12-19.

²¹⁶ *Id.* at 210: 12-23.

²¹⁷ The UCA's SOP at 20.

²¹⁸ *Supra*, ¶¶ 72-73; Hearing Exhibit 107, 10: 9-11.

is more, the UCA has not rebutted the Company's evidence that after conversion, Pawnee will lack the characteristics of a typical peaking unit because its nameplate capacity is much higher and because it lacks operational flexibility (*e.g.*, due to its slow start-up and shutdown times).²¹⁹

93. Notably, the Agreement provides that any party wishing to challenge the Company's decisions to dispatch Pawnee after conversion may do so through an appropriate ECA proceeding. The Agreement confirms this well-established process alongside the principle that the Company is expected to operate Pawnee in a prudent manner.²²⁰ For the reasons discussed, the ALJ approves Section III of the Agreement.

F. Conclusions

94. For the reasons and authorities discussed, the ALJ concludes that the preponderance of the evidence establishes that the applicable requirements to receive a CPCN have been met and that a CPCN to convert Pawnee to natural gas operations should be granted. Similarly, the ALJ finds that the preponderance of the evidence establishes that the Settlement Agreement, as modified, reflects a just and reasonable compromise between the Settling Parties to settle all issues that have been or could have been raised here; is in the public interest; and is just, reasonable and not discriminatory.²²¹ As such, the ALJ concludes that the Application should be granted, as modified by the Settlement Agreement and this Decision.

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

²¹⁹ *Supra*, ¶ 74.

²²⁰ Hearing Exhibit 108 at 5.

²²¹ Agreement provisions that are not modified by this Decision are approved.

III. ORDER**A. It is Ordered That:**

1. The Joint Motion to Approve Settlement Agreement filed on October 26, 2023 is partially granted consistent with the above discussion. The Settlement Agreement filed on October 26, 2023 (Settlement Agreement or Agreement) is approved with modifications consistent with the above discussion. The Agreement is attached as Appendix A to this Decision.

2. Proceeding No. 22A-0563E is closed.

3. Consistent with the above discussion, Public Service Company of Colorado (Public Service) must file in this Proceeding, no later than September 1, 2025, the calculation and methodology to develop the baseline for the Unit Efficiency Performance Incentive Mechanism (PIM) along with the resulting baseline and performance metric. This filing must meet the additional requirements discussed herein.

4. Consistent with the above discussion, Public Service shall file an advice letter to implement the tariff changes necessary to use the Electric Commodity Adjustment to account for earnings reductions and earnings increases associated with the Cost Management PIM, Timing PIM, and Unit Efficiency PIM. The advice letter shall be filed in a separate proceeding no later than September 1, 2025 with tariff sheets for effect on not less than 30 days' notice.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

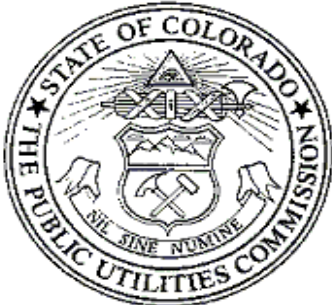
7. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the

recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

8. 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.

9. 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director