

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0327E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING EXPENSES INCURRED FOR THE PERIOD JANUARY 2023 THROUGH DECEMBER 2023 THAT ARE RECOVERED THROUGH THE ELECTRIC COMMODITY ADJUSTMENT AND PURCHASED CAPACITY COSTS RECOVERED THROUGH THE PURCHASED CAPACITY COST ADJUSTMENT FOR THE SAME PERIOD AND APPROVING THE CALCULATION OF 2023 SHORT TERM SALES MARGINS.

**COMMISSION DECISION DENYING EXCEPTIONS TO
RECOMMENDED DECISION NO. R25-0176**

Issued Date: May 15, 2025

Adopted Date: May 7, 2025

I. BY THE COMMISSION

A. Statement

1. In this Proceeding, Public Service Company of Colorado (“Public Service” or the “Company”) sought approval to recover approximately \$755 million in fuel and energy costs for calendar year 2023 through the Electric Commodity Adjustment (“ECA”), \$84 million in purchased capacity costs through the Purchased Capacity Cost Adjustment (“PCCA”), as well as gas hedging costs and short-term sales margins. The Administrative Law Judge (“ALJ”) who heard the case approved a non-unanimous settlement agreement between Public Service and Trial Staff of the Commission (“Trial Staff”) and rejected the Office of the Utility Consumer Advocate’s (“UCA”) recommendation for disallowances totaling approximately \$3.65 million based on claims of uneconomic dispatch. UCA filed exceptions challenging the ALJ’s findings, and both

Public Service and Trial Staff submitted a joint response urging the Commission to affirm the Recommended Decision. By this Decision we deny the exceptions filed by UCA.

B. Discussion

1. Recommended Decision No. R25-0176

2. Through Recommended Decision No. R25-0176 (“Recommended Decision”), issued on March 14, 2025, the ALJ approved a non-unanimous settlement between Public Service and Trial Staff, finding that the settlement was in the public interest and that the Company had demonstrated by a preponderance of the evidence that its 2023 ECA and PCCA costs were prudently incurred. The ALJ concluded that Public Service established a *prima facie* case through its voluminous direct case evidence and found the Company’s actions to be reasonable given the increasing complexity of system operations with greater renewable penetration. The ALJ also adopted a reporting requirement for future filings regarding directives from Southwest Power Pool-Western Energy Imbalance Service (“SPP-WEIS”) regarding curtailments.

3. The ALJ rejected UCA’s recommended disallowances, which were based on 90 instances where Public Service operated combustion turbines (“CTs”) or pumped hydro at Cabin Creek while simultaneously curtailing renewable energy. The ALJ found UCA’s argument that such coincident operations are inherently or presumptively imprudent to rest on a false premise. The ALJ determined that UCA had failed to meet its burden to raise a substantial question as to the prudence of the costs, and that Public Service’s rebuttal and hearing testimony sufficiently demonstrated reasonable operational justifications.

2. Exceptions

4. Through its Exceptions, filed on April 3, 2025, UCA raises two main challenges to the Recommended Decision. First, it argues that the ALJ misapplied the burden of proof

framework by failing to independently assess whether UCA had met its burden before considering the Company's rebuttal evidence. UCA maintains that it identified 90 specific instances of uneconomic dispatch based on the Company's own hourly generation data. UCA contends that the ALJ's reasoning improperly collapsed the burden-shifting framework by discrediting UCA's analysis based on rebuttal evidence without first determining that UCA had failed to make a prima facie showing.

5. UCA further argues that the ALJ's decision effectively insulates imprudent conduct from review by allowing a handful of analyzed events (8 out of 90) to serve as a proxy for all others. UCA asserts that generic justifications for dispatch decisions do not satisfy the Company's obligation to explain the prudence of specific, challenged actions.

6. The second challenge relates to the adequacy of the additional reporting requirement included in the Recommended Decision. UCA states that because the ALJ did not rule on whether SPP-WEIS curtailments are prudent, the additional reporting requirements could be meaningless because they will only be a record of instances of uneconomic dispatch that are already deemed prudent. UCA contends this additional reporting does not provide insight into the Company's generation decision making. UCA reiterates its argument that the reporting it recommended in its statement of position ("SOP"), that the Company provide periodic reports identifying each instance when CTs are operating at the same time renewable generation is curtailed or energy is injected into storage such as at Cabin Creek, is appropriate. UCA requests the Commission reverse the Recommended Decision's additional reporting requirement and adopt the reporting suggested by UCA in its SOP.

3. Response to Exceptions

7. Public Service and Trial Staff filed a Joint Response to Exceptions on April 17, 2025. They respond that the ALJ applied the correct legal framework and reasonably concluded that UCA's claims were speculative and lacked evidentiary substance. The Company emphasizes that UCA relied solely on spreadsheet analysis to identify coincidental events, without accounting for operational realities such as reserve requirements, transmission constraints, or mandatory testing.

8. Public Service defends the ALJ's use of inference and circumstantial evidence, particularly in finding that the Company's un rebutted explanation of eight high-value events reasonably supports a finding of prudence across similar events. Trial Staff reiterates that it reviewed the record in its entirety and agrees with the Company that the challenged operations were adequately justified. Both responding parties urge the Commission to deny UCA's exceptions and affirm the Recommended Decision in full.

9. As to the reporting requirements, Public Service and Trial Staff respond that the additional reporting requirement directly addresses one of UCA's primary concerns about the Company's operations and note that since the Company joined SPP-WEIS in April 2023, SPP-WEIS curtailment instructions have accounted for many of the instances of coincidental operation of CTs and curtailment of renewables. The Settling Parties note that hundreds of factors are involved in the Company's hour-by-hour operations and that information on SPP-WEIS curtailment instructions will provide insight into one of the major factors that affects operations and system dispatch decisions.

10. Public Service and Trial Staff agree with the ALJ that the additional reporting requirement strikes the right balance between providing the Commission information and the costs and resources required to produce that information. They contend that UCA's request in exceptions is essentially what UCA requested in its motions to compel during this Proceeding. They recommend the Commission deny UCA here because, as the ALJ found in denying the motions to compel, it is not reasonable to add hundreds of hours of work to system operators' responsibilities in order to comply with reporting requirements.

C. Findings and Conclusions

11. We turn first to UCA's claim that the ALJ improperly applied the burden of proof in this Proceeding. UCA portrays its position as presenting a policy question to the Commission: how rigorous does the Commission want the ECA/PCCA review process to be? UCA's central claim is that if we deny its exceptions then intervenors cannot possibly undertake a meaningful review of these costs which begs the question of why undertake the exercise at all. After reviewing this case, we believe that the more accurate narrative is one of UCA's difficulties in building its case, not the misapplication of the Commission's burden of proof.

12. After reviewing the record, it appears that UCA's struggle to timely propound discovery and to comply with discovery rules may have led it to approach this case not by presenting an evidence based argument that the 90 coincidences it identified were imprudent, but rather by presenting a theory that when Public Service operated CTs or pumped hydro at Cabin Creek while simultaneously curtailing renewable energy, it indicated imprudent dispatch.

13. The ALJ's Recommended Decision found that the sum and substance of UCA's case was the premise that when CT dispatch overlaps pumping hydro or renewable curtailment, Public Service has an additional burden to explain why either of these two events coincided.

But this premise unraveled in rebuttal testimony and during the hearing when Public Service’s witnesses described the many possible reasons why CTs would be run when either pumping Cabin Creek or curtailing renewables, and UCA’s own witness acknowledged that there are many reasonable explanations for why these two situations may coincide over the course of a year.¹

14. As outlined in the Recommended Decision, during the hearing Public Service discussed why there may be coincident periods where CTs run at the same time renewables were curtailed or Cabin Creek pumped. Those reasons include “testing, must-run conditions for transmission reliability, the need for reserves, renewable energy volatility, and transmission constraints (among others).”² A detailed list is included in the Recommended Decision at paragraph 70. The Recommended Decision concluded that the Company acted prudently as to the remaining 82 events at issue based on the detailed evidence on the eight challenged events, the Company’s Rebuttal Testimony, the record as a whole, and Trial Staff’s prudence investigation and resulting conclusion (Trial Staff Witness Erin O’Neil testified that Staff had examined the 90 instances and found no concerns).³

15. UCA’s theory of imprudence was largely discredited through rebuttal testimony and during the evidentiary hearing. As a result, we agree with the ALJ that on this record UCA’s challenge lacks substance. UCA’s claims that the ALJ impermissibly collapses the various burdens of the parties is similarly unpersuasive. Whether the ALJ decided to break her analysis into separate subsections or not, the end result is the same: the premise underlying UCA’s theory was largely discredited in rebuttal and at hearing, and the company’s support for its decisions met its

¹ See Recommended Decision No. R25-0176, ¶¶ 84-5 (concluding nearly the same and referencing the relevant hearing exhibits).

² Recommended Decision at ¶ 87.

³ *Id.*

burden of proof. UCA's arguments on burden shifting are based on faulty descriptions of how the burden of proof works, perhaps conflating burden shifting in the summary judgment context for the general civil burden of persuasion as it is applied at the Commission. The evidence is analyzed after the hearing, not, as UCA appears to assert, on a rolling basis as prefiled testimony comes in.

16. Accordingly, we reject the arguments that the ALJ misapplied the burdens of proof⁴ and persuasion in this Proceeding and uphold the Recommended Decision on these points.

17. However, we are sympathetic to the general information asymmetry in proceedings such as this one. Public Service has the information that intervenors may need to meaningfully evaluate these costs. To that end, and to lighten the burden of discovery in the next proceeding, Public Service shall file as part of its direct case in the next ECA/PCCA recovery proceeding a narrative explaining why combustion turbines were running while either pumping Cabin Creek or curtailing renewables. The narrative should encompass the top ten instances by dollar amount and provide analysis of the operational conditions that led to the relevant dispatch decisions. In this way, we hope to make review more accessible for intervenors.

18. We now address UCA's second issue, reporting requirements. We find that ALJ carefully considered the issue of the factors that can lead to coincident operation of CTs and curtailment of renewables or pumping Cabin Creek. We agree with the ALJ's determination that recording the instances when the Company is acting on directives from SPP-WEIS is appropriate and will allow the Commission and stakeholders to better understand how the Company's SPP-WEIS membership impacts its dispatch decision making. We deny UCA's request for

⁴ We note that in this Proceeding there was a dispute over whether Public Service has a rebuttable presumption of prudence once its direct case is filed. It does not. The Recommended Decision in paragraphs 80-81 correctly states and analyzes the burden of proof. We ask the parties to refrain from raising this argument, which appears to be based on Decision Nos. R20-0144 and C12-0159, in the future. To the extent these decisions may be read to imply a rebuttable presumption in all cost recovery proceedings we disclaim that interpretation.

additional reporting. UCA fails to provide any additional support for its request that the Company provide extensive information whose ultimate value has not been demonstrated and comes at a cost of significant burdens on system operators.

II. ORDER

A. The Commission Orders That:

1. The Exceptions filed on April 3, 2025, by the Office of the Utility Consumer Advocate are denied, consistent with the discussion above.

2. Public Service Company of Colorado (“Public Service”) is directed to file as part of its direct case in the next Electric Commodity Adjustment (“ECA”) and Purchased Capacity Cost Adjustment (“PCCA”) recovery proceeding a narrative explaining why combustion turbines were running while either pumping Cabin Creek or curtailing renewables. The narrative should encompass the top ten instances by dollar amount and provide analysis of the operational conditions that led to the relevant dispatch decisions.

3. In its next ECA/PCCA prudence review, Public Service shall include the information related to SPP-WEIS directives as indicated in Paragraph 100 of Recommended Decision No. R25-0176.

4. The 20-day time period provided by § 40-6-114, C.R.S., to file an Application for Rehearing, Reargument, or Reconsideration shall begin on the first day after the effective date of this Decision.

5. This Decision is effective immediately upon its Issued Date.

B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETINGS May 7, 2025.