

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0417E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS COST TO CONSTRUCT PERFORMANCE INCENTIVE MECHANISM ("PIM") AND OPERATIONAL PIM RELATED TO COMPANY-OWNED GENERATION RESOURCES APPROVED IN PROCEEDING NO. 21A-0141E.

**COMMISSION DECISION GRANTING MOTION FOR
APPROVAL OF UNOPPOSED COMPREHENSIVE
SETTLEMENT AGREEMENT, WITH CLARIFICATIONS**

Issued Date: June 5, 2025
Adopted Date: May 28, 2025

TABLE OF CONTENTS

I.	BY THE COMMISSION	2
A.	Statement	2
B.	Procedural History	2
C.	Discussion.....	6
1.	CtC PIM	7
2.	Operational PIM	13
3.	Availability PIM.....	16
4.	Cost Recovery of Capacity Resources	18
5.	Deferral of Litigation Expenses	19
6.	Reporting and Other Procedural Matters	20
7.	Timing PIM	21
II.	ORDER.....	22
A.	The Commission Orders That:	22
B.	This Order is effective immediately on its Issued Date.	23

I. BY THE COMMISSION**A. Statement**

1. By this Decision, the Commission grants the Motion to Approve Unopposed Comprehensive Settlement Agreement (“Settlement Agreement”) that Public Service Company of Colorado (“Public Service” or the “Company”) filed on April 10, 2025, on behalf of itself, Trial Staff of the Colorado Public Utilities Commission (“Staff”), and the Office of the Utility Consumer Advocate (“UCA”) (the “Settling Parties”). We find the resolution of this Proceeding, as achieved by the Settlement Agreement, is just and reasonable and in the public interest. The Settlement Agreement resolves all issues raised in this Proceeding with respect to Public Service’s Verified Application for Approval of its Cost to Construct Performance Incentive Mechanism and Operational PIM related to Company-Owned Generation Resources approved in Proceeding No. 21A-0141E (“Application”). With our determination to approve the Settlement Agreement, we find good cause to grant the Application, as modified by the Settlement Agreement and clarified during the evidentiary hearing.

2. While we ultimately grant the Settlement Agreement, we find it necessary to clarify that to modify the baseline of the cost to construct (“CtC”) performance incentive mechanism (“PIM”), the Company must establish extraordinary circumstances to the Commission’s satisfaction.

B. Procedural History

3. In Proceeding No. 21A-0141E, the Company’s 2021 Electric Resource Plan/Clean Energy Plan (“ERP/CEP”), the Commission issued Decision No. C24-0052,¹ (“Phase II Decision”). Among other things, in the Phase II Decision the Commission adopted “as part of the

¹ Issued January 23, 2024.

Commission’s approval of the planned acquisition of Company-owned generation projects” a CtC PIM and an operational PIM for all Company-owned generation projects.²

4. The Phase II Decision sets out the general framework for the CtC and operational PIMs. For instance, the Commission directed the CtC PIM to be a project-specific PIM, the baseline for which is the point cost for capital costs to construct the particular generation project that was used in the Company’s Phase II bid. The Commission further directed there be a 5percent deadband around the baseline and set a series of symmetric sharing percentages above and below the baseline.³ As for the operational PIM, the Commission directed that its baseline be the Levelized Energy Cost (“LEC”) set forth in Appendix P to the 120-Day Report. An operational PIM was to apply to every Company-owned generation project arising from the 2021 ERP/CEP, except for capacity-based projects like standalone storage and gas. Like the CtC PIM, the Commission set a 5 percent deadband around the LEC baseline and a series of symmetric sharing percentages above and below the baseline.⁴

5. The Phase II Decision notes, however, that certain considerations warrant further exploration in future proceedings. For instance, the Commission invited interested stakeholders and the Company to consider whether an operational PIM could be based on a project’s estimated capacity factor as opposed to the estimated LEC.⁵ In addition, the Commission contemplated that certain nuances of both PIMs would be further addressed in future CPCN filings, including whether to use the progressive or landing spot method, the appropriateness of a timing PIM, and the treatment of curtailments.⁶

² Phase II Decision at ¶ 181.

³ Phase II Decision at ¶¶ 182-84.

⁴ Phase II Decision at ¶¶ 186-88.

⁵ Phase II Decision at ¶ 192.

⁶ Decision No. C24-0161 at pp. 48-52, issued in Proceeding No. 21A-0141 (March 13, 2024).

6. On March 25, 2024, Public Service filed an application in Proceeding No. 24A-0140E for its first Certificate of Public Convenience and Necessity (“CPCN”) arising from the 2021 ERP/CEP. This application sought CPCNs for the Rocky Mountain solar plus storage project and the Arroyo 2 Solar Project. On June 7, 2024, Public Service, Staff, and the UCA filed an unopposed comprehensive settlement agreement.⁷ A significant portion of the focus of the settlement agreement addressed the implementation of the CtC and operational PIMs for the Rocky Mountain and Arroyo 2 projects. As part of the settlement agreement, Public Service committed to filing, no later than September 30, 2024, an application regarding the CtC and operational PIMs for all Company-owned projects arising from the 2021 ERP/CEP, including the Rocky Mountain and Arroyo 2 projects. Among other things, this September 30, 2024 application for the CtC and operational PIMs was intended to clarify the treatment of curtailments and the proper amortization period for any incentives/disincentives under the CtC PIM.

7. On July 23, 2024, the Commission issued Decision No. 24-0525 in Proceeding No. 24A-0140E, granting the settlement agreement without modification. On August 20, 2024, the Commission issued Decision No. C24-0588, providing certain guidance to Public Service regarding the September 30, 2024 application for the CtC and operational PIMs.⁸

8. On September 30, 2024, Public Service filed the present Application for approval of a CtC PIM and an operational PIM.

9. On November 15, 2024, the Commission deemed the Application complete in Decision No. C24-0829-I, and established Public Service, Staff, UCA, Colorado Energy Consumers (“CEC”) and Climax Molybdenum Company (“Climax”) as the parties.

⁷ Decision No. C24-0525 at ¶ 8 issued in Proceeding No. 24A-0140E (July 23, 2024).

⁸ Decision No. C24-0588 at pp. 3-4.

10. On April 10, 2025, Public Service, on behalf of the Settling Parties, filed the Motion to Approve the Settlement Agreement. The Motion to Approve Settlement Agreement represents that while CEC and Climax do not join the Motion, they do not oppose the Settlement Agreement.

11. On April 14, 2025, Staff filed an Unopposed Motion for Extension of Time to File Settlement Testimony. Staff requested a one-week extension to April 24, 2025, to file settlement testimony, and requested that any extension be simultaneously granted for all intervenors.

12. By Decision No. C25-0299-I,⁹ the Commission granted Staff's Unopposed Motion for Extension and set a deadline of April 24, 2025, for all intervenors to file Settlement Testimony. However, the Commission encouraged intervenors who are able to submit settlement testimony by April 17, 2025, to do so.

13. On April 17, 2025, Public Service and UCA filed settlement testimony. On April 24, 2025, Staff filed its settlement testimony.

14. On April 29, 2025, the Commission convened the evidentiary hearing in this Proceeding. During the evidentiary hearing, the Commission admitted into evidence the following hearing exhibits and their associated attachments: Hearing Exhibit 100, Hearing Exhibit 101, Hearing Exhibit 102, Hearing Exhibit 103, Hearing Exhibit 104, Hearing Exhibit 105, Hearing Exhibit 300, Hearing Exhibit 301, Hearing Exhibit 600, Hearing Exhibit 601, and Hearing Exhibit 700.

15. On May 16, 2025, the Settling Parties submitted a Joint Statement of Position ("SOP").

⁹ Issued on April 16, 2025.

C. Discussion

16. The Settling Parties state the Settlement Agreement—including as Attachment A to this Decision—is intended to resolve all issues that have been raised or could have been raised in this Proceeding. The Settling Parties agree the provisions of the Settlement Agreement are just, reasonable, and consistent with the public interest and should be approved by the Commission without modification.

17. Pursuant to Rule 1408(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1, the Commission may approve, deny, or require modification to any settlement as the public interest requires. When reviewing a settlement, the Commission considers whether the terms adequately address the issues raised in the proceeding and reach a result that is just and reasonable and in the public interest. As the proponents of an order approving the settlement, the settling parties bear the burden of proof to establish by a preponderance of the evidence that the settlement is just and reasonable and in the public interest.¹⁰ In determining whether to approve a settlement, the Commission balances the longstanding policy of encouraging settlements in contested cases¹¹ and the Commission’s independent duty to determine whether matters are in the public interest.¹² The Commission does not necessarily need to find the settled terms are the same as the Commission would have reached; rather, the Commission considers whether the settled terms adequately address the issues raised in the proceeding and reach a result that is just and reasonable and in the public interest.¹³

¹⁰ Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1.

¹¹ See, e.g., Rule 1408, 4 CCR 723-1.

¹² See, e.g., Decision No. C12-1107 at p. 9 issued in Proceeding No. 11A-833E (September 24, 2012), citing *Caldwell v. Pub. Utils. Comm’n*, 692 P.2d 1085, 1089 (Colo. 1984).

¹³ See *Caldwell*, 692 P.2d at 1089; See also *City of Boulder v. Colo. Pub. Utils. Comm’n*, 996 P.2d 1270, 1278 (Colo. 2000).

18. The Commission applies these principles and legal standards here to assess the Settlement Agreement as a resolution of the issues in this Proceeding. We discuss the settled terms below along with the relevant settlement testimony proffered by the Settling Parties, and provide our findings and conclusions.

1. CtC PIM

19. In the Settlement Agreement, the Settling Parties agree to a CtC PIM as detailed in the Direct Testimony of Michael Pascucci, with certain modifications.¹⁴ During the evidentiary hearing, however, Mr. Pascucci clarified several aspects of the CtC PIM. For instance, Mr. Pascucci acknowledged the testimony of Mr. Watson is still applicable.¹⁵ Also, although Mr. Pascucci's Settlement Testimony states, "Attachment SAW-4 still controls as the CtC PIM calculator,"¹⁶ the actual CtC PIM calculator is set forth in Hearing Exhibit 102, Attachment SAW-1, Rev. 1.¹⁷

20. As set forth in Mr. Pascucci's testimony and clarified during the evidentiary hearing, the CtC PIM baseline begins with the point cost for the capital cost to construct the particular generation project included in the Company's Phase II bid in the 2021 ERP/CEP. This baseline includes all expected capitalizable costs necessary to bring the project to commercial operation, including the expected Allowance for Funds Used During Construction ("AFUDC"). In addition, the anticipated projected-related Investment Tax Credits ("ITCs") are subtracted from the baseline.¹⁸

¹⁴ Hr. Ex. 104, Settlement Agreement, p. 2.

¹⁵ Hr. Tr. April 29, 2025, p. 14.

¹⁶ Hr. Ex. 105, Pascucci Settlement Testimony, p. 8.

¹⁷ Hr. Tr. April 29, 2025, p. 15.

¹⁸ Hr. Ex. 101, Pascucci Direct, p. 12.

21. The final CtC baseline will be approved through the CPCN proceedings. During the evidentiary hearing, Company witness Mr. Pascucci clarified that, aside from any adjustments permitted under the CEP Delivery Decision,¹⁹ any additional modifications to the capital cost in the Phase II bid would need to be presented as extraordinary circumstances.²⁰

22. The established baseline for the CtC PIM will be compared against the actual construction costs, including AFUDC and actual net-realized ITCs. The CtC PIM will have a 5 percent deadband around the approved baseline and for any deviations greater than 5 percent, the Company will apply the following sharing bands: for a total variance of more than 5 percent through 10 percent above or below the baseline, 40 percent of the cost overruns or savings would be allocated to Public Service. For a variance of more than 10 percent through 15 percent above or below the baseline, 50 percent of the cost overruns or savings would be allocated to Public Service. For any variance above or below 15 percent of the baseline, 60 percent of the cost overruns or savings would be allocated to Public Service.²¹

23. In addition to this basic structure, the Settlement Agreement makes four specific modifications to the CtC PIM as put forth in Public Service's Direct Testimony. First, any incentive/disincentive will be amortized over a period of 10 years. Second, any incentive/disincentive will have no interest or carrying charge over the life of the amortization. Third, the CtC PIM will utilize the Landing Spot method to determine the calculation of sharing levels. And fourth, any incentive/disincentive will be based upon the retail share of costs included in rate base subject to the retail/wholesale ratio in effect at the time of reconciliation.²²

¹⁹ Decision No. C25-0024 issued in Proceeding 21A-0141E (January 14, 2025).

²⁰ Hr. Tr. April 29, 2025, p. 50.

²¹ Hr. Ex. 105, Pascucci Settlement Testimony, p. 8.

²² Hr. Ex. 104, Settlement Agreement, p. 3.

24. Regarding implementation of the CtC PIM, the Settlement Agreement specifies that any incentive/disincentive will flow through the Electric Commodity Adjustment (“ECA”) for the length of the 10-year amortization period. This will commence starting in the second quarterly ECA following the commercial operation date of the project. The initial amount collected or credited through the ECA will be based on the Company’s calculation, and this calculation will be reconciled in the first electric rate case following the project’s commercial operation date.²³ As for the amortization of ITCs, the Settling Parties agree that ITCs will flow back to customers over the depreciable life of the associated asset, applying a weighted average cost of capital return on the underlying regulatory asset. Other than the increased amortization period, ITC benefits will be treated in the same manner as approved in the settlement in the Rocky Mountain/Arroyo CPCN proceeding (Proceeding No. 24A-0140E).²⁴

25. The SOP reiterates the main points of the CtC PIM but also describes how the price adjustments contemplated in the CEP Delivery Decision will work in the applicable CPCN proceedings. The SOP states that under the CEP Delivery Plan, “the Company may obtain a baseline CtC adjustment upon certain showings in the CPCN proceedings.”²⁵ More specifically, under the CEP Delivery Plan, the CtC baseline of the Company’s wind units may be adjusted upward consistent with up to a 6 percent NPV increase and non-wind renewable units may be adjusted upward consistent with a 1 percent NPV increase. Company-owned thermal units do not have a set cap on potential increases. The SOP describes this as the first step in the analysis.²⁶

²³ Hr. Ex. 104, Settlement Agreement, pp. 3-4.

²⁴ Hr. Ex. 101, Pascucci Direct, p. 19; Hr. Ex. 601, O’Neill Settlement Testimony, p. 7. During the evidentiary hearing, Mr. Pascucci clarified that the Settlement Agreement in this Proceeding is intended to be prospective and does not modify the settlement agreement approved in the Rocky Mountain/Arroyo 2 CPCN proceeding. For instance, the ITC flowback period for Rocky Mountain and Arroyo 2 continues to be five years. (*See* Hr. Ex. 101, Pascucci Direct, p. 19).

²⁵ SOP at p. 9.

²⁶ SOP at pp. 10-11.

In addition, the Company may still seek additional price relief based on changes in law. In addition to this CEP Delivery Plan relief, the SOP states the Company “may choose to seek additional relief for extraordinary circumstances” in which the Company “would need to establish extraordinary circumstances beyond the Component 1, Stage 1 adjustment to the baseline.”²⁷

26. The SOP appears to assert that adjustments to the CtC PIM baseline are warranted simply by showing that increased costs are a result of the broad category of “market dynamics.” The Company would be able to seek additional relief unrelated to market dynamics (or after the project is constructed) upon a showing of extraordinary circumstances. This discussion of market dynamics versus extraordinary circumstances appears neither in the text of the Settlement Agreement nor the Direct Testimony Michael Pascucci, which the Settlement Agreement largely incorporates by reference.

27. The Commission finds the Settlement Agreement’s provisions regarding the CtC PIM, as clarified at hearing, are in the public interest. The CtC PIM agreed upon by the Settling Parties establishes a reasonable compromise on important details such as the amortization of any incentives/disincentives, the treatment of ITCs, and the actual implementation of the CtC PIM.

28. At the same time, we are concerned the SOP’s characterization of the CEP Delivery Decision could create confusion in future CPCN filings. Specifically, the SOP states “the Company may obtain a baseline CtC adjustment upon certain showings in the CPCN proceedings,”²⁸ but the SOP is unclear what those “certain showings” are. In the CEP Delivery Decision, the Commission rejected the Company’s approach to approve Stage 1 price increases in the CEP Delivery Decision. Instead, the Commission deferred granting approval of the requested price increases until the

²⁷ SOP at p. 11.

²⁸ SOP at p. 9.

appropriate CPCN proceeding, during which the “Commission and interested stakeholders will be able to evaluate the validity of the requested price increases ... in much the same way that Public Service initially anticipated the [independent auditor] would evaluate price increases.”²⁹

29. In light of arguments from Staff and CEO to defer approving the requested price increases for the thermal units to the follow-on CPCNs, Public Service had requested the Commission make the following finding (among others): “For purposes of any future CtC PIM calculation, the market dynamics described in the CEP Delivery Plan filing *are ... extraordinary circumstances* within the terms of the CtC PIM, subject to future adjudication by the Commission following development of the project in question.”³⁰ As set forth below, the Commission modified this to find that market dynamics “*may potentially* constitute extraordinary circumstances.” This change, along with the rest of the Commission’s findings below, signifies that under the CEP Delivery Decision, market dynamics do not necessarily constitute extraordinary circumstances that would adjust the CtC PIM baseline.

30. For Company-owned thermals, the CEP Delivery Decision specifies:

The thermal projects that have earned a presumption of prudence in this Proceeding will advance to the CPCNs with this presumption of prudence intact as to the project’s as-bid amounts. In the CPCN proceedings, the Commission could determine the incremental costs above the project’s as-bid amounts potentially constitute extraordinary circumstances and accordingly adjust both the CtC baseline and the level of costs that carry a presumption of prudence.

.... As determined in the respective CPCN proceedings, costs in excess of as-bid amounts may be added into the baseline for purposes of determining the CtC and operational PIM baselines. For purposes of any future CtC PIM calculation, the market dynamics described in the CEP Delivery Plan filing may potentially constitute extraordinary circumstances within the terms of the CtC PIM (*i.e.*, unforeseen costs that could not have been known at the

²⁹ CEP Delivery Decision at p. 20

³⁰ CEP Delivery Decision at ¶ 132 (citing Hr. Ex. 166, Attachment JWI-19HC (Reply Comments), p. 19) (emphasis added).

time the bid was made), subject to future adjudication by the Commission following development of the relevant project. Similarly, although potentially less applicable, the same would be true for the operational PIM. Moreover, prudently incurred costs associated with each of the projects will be eligible for recovery; provided, however, that this in no way impacts the application of the PIMs. For instance, the Company may earn a disincentive under the CtC PIM regardless of whether the underlying costs are imprudent.³¹

31. The description of the available price relief for Company-owned renewables is largely identical:

As determined in the respective CPCN proceedings, costs in excess of as-bid amounts may be added into the baseline for purposes of determining the CtC and operational PIM baselines. For purposes of any future CtC PIM calculation, the market dynamics described in the CEP Delivery Plan filing may potentially constitute extraordinary circumstances within the terms of the CtC PIM (*i.e.*, unforeseen costs that could not have been known at the time the bid was made), subject to future adjudication by the Commission following development of the relevant project. Similarly, although potentially less applicable, the same would be true for the operational PIM. Moreover, prudently incurred costs associated with each of the projects will be eligible for recovery; provided, however, that this in no way impacts the application of the PIMs. For instance, the Company may earn a disincentive under the CtC PIM regardless of whether the underlying costs are imprudent.

In addition to the above findings, we clarify that utility-owned clean energy projects are subject to the same price cap as the respective PPA projects.³²

32. The above paragraphs from the CEP Delivery Decision set the standard for the “certain showings” the Company must establish in the CPCN proceedings in order to obtain price relief due to market dynamics. Specifically, under the CEP Delivery Decision, market dynamics do not necessarily constitute extraordinary circumstances that would adjust the CtC PIM baseline. Rather, in the respective CPCN proceedings, the Commission may or may not determine that costs in excess of the Phase II bids—including costs relating to market dynamics—constitute extraordinary circumstances and thus warrant adjustment to the PIM baselines. Only if the

³¹ CEP Delivery Decision at ¶¶ 137-38.

³² CEP Delivery Decision at ¶¶ 53-54.

Company meets this standard will the CtC PIM baseline be adjusted. These provisions further contemplate that increases to a project's costs may be prudent and thus eligible for recovery, but even costs that are prudently incurred might trigger a disincentive under the CtC PIM.

33. To avoid confusion and inconsistent applications of the CEP Delivery Decision in subsequent CPCN proceedings, we clarify that to adjust the CtC PIM baselines in the relevant CPCN proceedings, the Company must demonstrate extraordinary circumstances. The Company cannot adjust the CtC PIM baseline by simply showing the cost increases are reasonable or prudent or that they fall under the broad category of "market dynamics." During the CPCN proceedings, the Commission will determine whether the particular market dynamics or other factors impacting the projects constitute extraordinary circumstances.

2. Operational PIM

34. The Settlement Agreement adopts the framework of a capacity factor operational PIM as proposed in Staff's Answer Testimony,³³ with several modifications. In general, the Settlement Agreement contemplates an operational PIM where the baseline generation, adjusted for weather, is measured against actual generation (including curtailed production). The incentive/disincentive will be calculated by multiplying the deviation between the baseline and actual generation by the LEC presented in Appendix P of the Company's 120-Day Report and then applying the applicable sharing band set forth in the Settlement Agreement using the progressive method. In addition, the operational PIM will calculate the effect of changes in generation on Production Tax Credits ("PTCs"), and the resulting deviation will be subject to the same sharing bands applicable to the generation deviation calculation.³⁴

³³ Hr. Ex. 600, O'Neill Answer, p. 59.

³⁴ Hr. Ex. 104, Settlement Agreement, pp. 11-12, p. 6.

35. The resulting total incentive/disincentive for each project will be subject to an annual cap equal to \$7,200 multiplied by the project's nameplate capacity in megawatts. In addition, the Company will be subject to a total annual incentive/disincentive cap across all applicable projects equal to \$3,600 multiplied by the sum of the applicable project's nameplate capacity in megawatts.³⁵ Public Service provides Hearing Exhibit 105, Attachment MVP-1, Rev. 1 as part of its Settlement Testimony as an illustrative operational PIM calculator.

36. The Settlement Agreement specifically provides that in the CPCN proceedings Public Service will provide a comparison of the as-bid and updated generation forecast, to the extent that they differ.³⁶ The generation baseline will be equal to the CPCN generation forecast for each applicable project, but the Settling Parties reserve their right in future CPCNs proceedings to challenge any generation baseline to the extent that it deviates from the as-bid generation baseline for a project.³⁷

37. As for how the generation baseline will be adjusted for weather, the Settling Parties commit to develop a weather adjustment mechanism. Under the Settlement Agreement, the Settling Parties will develop this weather adjustment approach by the end of 2025 and file a Notice in this Proceeding detailing its application. If the Settling Parties are unable to agree to a weather adjustment approach by December 31, 2025, however, they will notify the Commission by the end of the year and follow certain specified resolution procedures to have the Commission resolve the appropriate weather adjustment approach.³⁸ The Settlement Agreement states the objective of the weather adjustment approach is to avoid outcomes where weather conditions cause an incentive

³⁵ Hr. Ex. 104, Settlement Agreement, p. 7.

³⁶ The baselines for the Rocky Mountain and Arroyo 2 projects are set forth in Exhibit A to the Settlement Agreement.

³⁷ Hr. Ex. 104, Settlement Agreement, p. 4.

³⁸ Hr. Ex. 104, Settlement Agreement, p. 4.

or disincentive. During the evidentiary hearing, Staff witness Erin O'Neill clarified the weather adjustment approach is not intended to eliminate the impacts of overly optimistic weather assumptions the Company might have used in its Phase II bid: "If that baseline was overly optimistic, that would still be retained.... You are not going to wash out that overly optimistic starting point...."³⁹

38. The PIM will be implemented in the first full calendar year following each project's commercial operation date and will be reconciled on an annual basis in the ECA/Purchased Capacity Cost Adjustment ("PCCA") Annual Prudence Review. Any incentive/disincentive will be included as an adjustment to the ECA revenue requirement for the following year with no carrying charge.⁴⁰

39. We find that the operational PIM, as set forth in the Settlement Agreement and clarified during the evidentiary hearing, is in the public interest. The adoption of a capacity factor based operational PIM reflects a compromise approach that addresses many of Staff's initial concerns regarding the Company's proposed operational PIM.

40. Although the operational PIM set forth in the Settlement Agreement differs in some ways from what the Phase II Decision contemplates, the Commission finds the overall result is reasonable. For instance, the sharing tiers under the Settlement Agreement are lower than those set forth in the Phase II Decision, and the Phase II Decision does not contemplate capping the annual incentives/disincentives. On the other hand, the Settlement Agreement reduces the deadband from 5 percent to 3 percent and helps ensure that the impacts of PTCs are included in the incentive/disincentive calculation. Moreover, Staff has clarified the weather adjustment

³⁹ Hr. Tr. April 29, 2025, p. 60.

⁴⁰ Hr. Ex. 104, Settlement Agreement, pp. 7-8.

approach the Settling Parties will develop is not intended to completely insulate the Company from the weather assumptions it made in its Phase II bid.

41. Ultimately, the operational PIM should generate reasonable and meaningful incentives/disincentives and is supported by the Settling Parties. We approve the operational PIM set forth in the Settlement Agreement, as clarified during the evidentiary hearing, without modification.

3. Availability PIM

42. The Settlement Agreement establishes an availability PIM for Bid 1000.⁴¹ This availability PIM focuses on the percentage of unit availability during a given period by using the Equivalent Unplanned Outage Factor (“xEUOF”) calculation provided by the North American Electric Reliability Corporation (“NERC”) and set forth in Exhibit B and Exhibit C to the Settlement Agreement.⁴²

43. The baseline xEUOF for Bid 1000 is 3 percent with a 2 percent deadband. If Bid 1000 performs worse than the baseline and beyond the deadband for an applicable year, the annual disincentive will be \$2,500 for every one basis point deviation beyond the 2 percent deadband, up to a maximum annual disincentive amount of one million dollars. If Bid 1000 performs better than the baseline and beyond the deadband for an applicable year, the annual incentive will be \$10,000 for every one basis point deviation beyond the 2 percent deadband, up to a maximum annual incentive amount of one million dollars. This maximum one million dollar incentive would occur with 100 percent (or perfect) availability.⁴³

⁴¹ Bid 1000 is a gas-fired thermal generation unit.

⁴² Hr. Ex. 104, Settlement Agreement, p. 8.

⁴³ Hr. Ex. 104, Settlement Agreement, pp. 8-9.

44. The availability PIM will be reconciled on an annual basis in the ECA/PCCA Annual Prudence Review. Any incentive/disincentive will be included as an adjustment to the PCCA revenue requirement for the following year with no carrying charge.⁴⁴

45. In its Settlement Testimony, the Company explains the xEUOF formula is focused on unplanned events for which the Company did not schedule an outage or other maintenance event. By isolating the unplanned events, the Company argues, the Availability PIM can better evaluate the Company's management of the unit. This also removes the unintended incentive to skip or shorten planned outages to achieve more availability at the risk of long-term reliability.⁴⁵

46. The Company argues that variances from the 3 percent xEUOF baseline are treated asymmetrically because the Company has a much more limited scope for increased availability relative to unavailability. In other words, the unit could theoretically go from a 3 percent xEUOF to a 100 percent xEUOF if the unit goes offline. On the other hand, even with perfect availability, the unit could only move from a 3 percent xEUOF to a 0 percent xEUOF.⁴⁶ Staff echoes this reasoning in its Settlement Testimony.⁴⁷

47. In conjunction with its Settlement Testimony, Public Service provides Hearing Exhibit 105, Attachment MVP-3, which is a calculator reflecting the agreed upon methodology for the availability PIM.

48. We approve the availability PIM as set forth in the Settlement Agreement. The availability PIM provides an appropriate and useful incentive for the Company to ensure the availability of Bid 1000—an important capacity resource. The annual cap on incentives/disincentives is reasonable given that the availability PIM with its xEUOF metric is a

⁴⁴ Hr. Ex. 104, Settlement Agreement, p. 9.

⁴⁵ Hr. Ex. 105, Pascucci Settlement Testimony, p. 21.

⁴⁶ Hr. Ex. 105, Pascucci Settlement Testimony, pp. 21-22.

⁴⁷ Hr. Ex. 601, O'Neill Settlement Testimony, p. 17.

new type of performance mechanism, warranting a cautious approach. For the reasons set forth by Public Service and Staff in their respective Settlement Testimony, the asymmetric sharing tiers is also appropriate in this instance.

49. While we recognize the Availability PIM in the Settlement Agreement only applies to Bid 1000, we note our interest in applying similar incentive mechanisms to other thermal units going forward. Public Service has described thermal units as a necessary insurance policy to help ensure the reliability of the system. As such, it appears appropriate to ensure Public Service is properly incentivized to ensure Company-owned thermal units are available when needed. Aside from Bid 1000, application of any such availability PIM on other Company-owned thermal units will be adjudicated in future proceedings, as appropriate.

4. Cost Recovery of Capacity Resources

50. Under the Settlement Agreement, Public Service may recover the costs of all capacity resources procured through the 2021 ERP/CEP in the PCCA with recovery commencing on any unit's commercial operation date. For each capacity resource, recovery will commence utilizing the Company's best estimate of costs in the filing setting the PCCA rate for the period that includes the anticipated commercial operation date of those units. Recovery will continue until the effective date of rates in an electric base rate case in which recovery of the particular capacity resource is included in base rates.⁴⁸

51. In its Settlement Testimony, Public Service argues allowing rider recovery of capacity resources pursuant to the Settlement Agreement is the public interest for two reasons. First, the approach better aligns the Company and independent power producer ("IPP") models.

⁴⁸ Hr. Ex. 104, Settlement Agreement, p. 10.

Second, the provisions avoid the potential for the Company to file electric rate cases solely for the purpose of recovering its prudently incurred costs when capacity units go into service.⁴⁹

52. For its part, Staff states it continues to disagree with the Company regarding the overarching policy questions of whether accelerated cost recovery or regulatory lag cost recovery through base rates is more appropriate for capacity projects. In light of the “substantial risk” the Company is assuming with the PIMs, however, Staff concludes that it is just and reasonable in this instance for the Company’s capacity projects to enjoy rider recovery until they are rolled into base rates pursuant to the Settlement Agreement.⁵⁰

53. We approve the Settlement Agreement’s provisions regarding accelerated cost recovery without modification. The Commission agrees with Staff’s Settlement Testimony that, in the context of the agreed-upon PIMs and the larger Settlement Agreement, accelerated cost recovery for the capacity resources procured through the 2021 ERP/CEP is appropriate in this instance.

5. Deferral of Litigation Expenses

54. The Settlement Agreement specifies that the Company can track and defer litigation expenses associated with this Proceeding, with no carrying cost. The Settlement Agreement specifies that no presumption of prudence is attached to these costs.⁵¹

55. In its Settlement Testimony, Public Service notes that it has estimated the litigation expenses at approximately \$150,000 with no carrying charge. The Company asserts, however, the Settlement Agreement will reduce the actual expenses by avoiding the need for full hearing preparation, hearing work, and post hearing briefing that would otherwise be required.⁵²

⁴⁹ Hr. Ex. 105, Pascucci Settlement Testimony, pp. 24-25.

⁵⁰ Hr. Ex. 601, O’Neill Answer, pp. 20-21.

⁵¹ Hr. Ex. 104, Settlement Agreement, p. 10.

⁵² Hr. Ex. 105, Pascucci Settlement Testimony, p. 26.

Public Service also asserts that allowing the Company to recover prudently incurred costs related to litigating proceedings is just and reasonable because these are actual costs associated with regulated utility functions and not typically assumed in the normal course of business.⁵³

56. We approve the Settlement Agreement's provisions regarding the tracking and deferral of litigation expenses. The expenses will incur no interest, no presumption of prudence attaches, and the proposal is unopposed.

6. Reporting and Other Procedural Matters

57. Regarding reporting, the Settling Parties agree that the Company will provide annual reporting for utility-owned projects subject to PIMs in its ERP Annual Progress Report, beginning with the March 2026 report. The Company and Staff will confer on the content of such reports and project reporting will be included in the ERP Annual Report following the reconciliation of the PIM. In addition, the Settling Parties commit to discuss the potential for a comprehensive annual report on PIMs. Any comprehensive reporting will supersede the PIM reporting in the ERP Annual Reports.⁵⁴

58. Finally, the Settlement Agreement reiterates that Public Service retains the opportunity to file for extraordinary circumstances for any of the proposed PIMs at the time it files to reconcile the PIM. Also, the Settling Parties reserve their rights to review plant operations for prudence in future ECA and PCCA annual prudence reviews, provided that any disincentive paid under any of the PIMs that are the subject of this Settlement Agreement shall be considered in evaluating any allegations of imprudence with attendant disallowances.⁵⁵

⁵³ Hr. Ex. 105, Pascucci Settlement Testimony, p. 27.

⁵⁴ Hr. Ex. 104, Settlement Agreement, p. 10.

⁵⁵ Hr. Ex. 104, Settlement Agreement, p. 11.

59. In its Settlement Testimony, Public Service acknowledges that reporting on the PIMs is important for transparency as well as for understanding the impact of the PIMs and how they affect the Company's financial position.⁵⁶ Staff states it continues to believe comprehensive PIM reporting is preferrable but acknowledges that the details of such comprehensive reporting have not been established. Until this comprehensive reporting can be established, Staff opines that reporting in the annual ERP reports is appropriate.⁵⁷

60. We approve the provisions of the Settlement Agreement regarding reporting and other procedural matters. These provisions are unopposed and help lay the groundwork for useful and comprehensive reporting on the PIMs in this Proceeding. These provisions further add important clarity regarding the Company's ability to assert extraordinary circumstances that warrant deviating from the PIMs as well as the rights of Staff and UCA to conduct prudency reviews of the projects.

7. Timing PIM

61. The Settlement Agreement does not expressly address the issue of a timing PIM. In its Settlement Testimony, Staff acknowledges this omission and opines that the Settlement Agreement thus adopts the Company's proposal from Direct Testimony that no timing PIM should be implemented. Staff states it agrees with the Company's conclusion that the financial impact of AFUDC provides sufficient incentive to the Company regarding project completion timelines.⁵⁸

62. The Commission will not modify the Settlement Agreement regarding the issue of a timing PIM. As a general matter, however, we are doubtful that the financial impact of AFUDC is a perfect replacement for a well-crafted timing PIM. While the Company incurs financial

⁵⁶ Hr. Ex. 105, Pascucci Settlement Testimony, p. 27.

⁵⁷ Hr. Ex. 601, O'Neill Settlement Testimony, pp. 19-20.

⁵⁸ Hr. Ex. 601, O'Neill Answer, p. 9.

impacts from AFUDC when the duration of construction lasts longer than anticipated, the financial impacts of delaying the start of construction are far less clear. Nevertheless, consistent with the compromises reached by the Settling Parties in the Settlement Agreement, the Commission will not attempt to craft and implement a timing PIM in this Proceeding.

II. ORDER

A. The Commission Orders That:

1. The Motion to Approve Unopposed Comprehensive Settlement Agreement (“Settlement Agreement”) that Public Service Company of Colorado filed on April 10, 2025, on behalf of itself, Trial Staff of the Colorado Public Utilities Commission, and the Office of the Utility Consumer Advocate is granted, consistent with the discussion above.

2. The Settlement Agreement, which is included as Attachment A to this Decision, is approved without modification, consistent with the discussion above.

3. The Commission clarifies that to modify the baseline of the cost to construct performance incentive mechanism, the Company must establish extraordinary circumstances to the Commission’s satisfaction, consistent with the discussion above.

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

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
MAY 28, 2025.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners