

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \* \*

IN THE MATTER OF THE APPLICATION )  
OF PUBLIC SERVICE COMPANY OF )  
COLORADO FOR AN ORDER FINDING )  
THAT THE CABIN CREEK FACILITY ) PROCEEDING NO. 24A-0299E  
PROJECT WAS PRUDENT WITH )  
UPGRADES TO BOTH GENERATING )  
UNITS ALONG WITH AN EXPANSION OF )  
THE FACILITY'S UPPER RESERVOIR. )

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**HIGHLY CONFIDENTIAL** NON-UNANIMOUS COMPREHENSIVE SETTLEMENT  
AGREEMENT

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NOTICE OF CONFIDENTIALITY  
A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL  
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## **INTRODUCTION AND IDENTIFICATION OF PARTIES**

This Non-Unanimous Comprehensive Settlement Agreement (“Settlement Agreement” or “Agreement”) is filed on behalf of Public Service Company of Colorado (“Public Service” or the “Company”) and Trial Staff of the Commission (“Staff”) (each a “Settling Party” and collectively the “Settling Parties”), pursuant to Rule 1408 of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

This Settlement Agreement is intended to resolve all issues raised by the Settling Parties in this proceeding with respect to the Company’s Verified Application for an Order Finding the Cabin Creek Facility Project was Prudent (“Application”).

## **SETTLEMENT AGREEMENT**

The Settling Parties agree that the Commission should approve the Company’s Application, including all requested relief, subject to the following modifications and conditions:

### **I. Ratemaking Treatment for Department of Energy (“DOE”) Funding**

1. The Settling Parties agree that Public Service will return the entirety of the up-to \$5 million DOE benefit, if it is received by Public Service, through the first quarterly Electric Commodity Adjustment (“ECA”) filing after a final Commission decision approving the Settlement Agreement in this proceeding or after receipt of the funds, whichever is later.

### **II. Scope of Prudence Determination**

2. The Settling Parties agree that no presumption of prudence will apply to costs incurred specifically for the Cabin Creek Units A and B Upgrade Project and the Upper Reservoir Expansion (together, the “Cabin Creek Facility Project”), if incurred after

April 30, 2024. In other words, the prudency determination as a result of the Company's Application, Direct Testimony, Rebuttal Testimony and approval of this Settlement Agreement applies to costs incurred for the Cabin Creek Facility Project through April 30, 2024.

**III. Credit to Customers for True-Up of Liquidated Damages Under GE Contract**

3. The Settling Parties agree that the Company will provide a credit to customers in the amount of a true-up between the actual liquidated damages collected under the Cabin Creek Units A and B Upgrade Project contract with Alstom/GE and the \$5 million already advanced to customers, as discussed in the Direct Testimony of Jason J. Peuquet. The amount of the true-up is [REDACTED]. The credit will be provided through the first quarterly ECA filing after a final Commission decision approving the Settlement Agreement in this proceeding.

**IV. Reduction in Equity Return Relating to the Cabin Creek Facility Project**

4. The Settling Parties agree that the Company will apply a reduction in equity return on the Cabin Creek Facility Project over a five-year period equal to \$8 million based on the totality of circumstances associated with the Cabin Creek Facility Project through April 30, 2024, consistent with Section 2 above. The Company will effectuate this reduction through twenty (20) equal quarterly reductions to revenues collected via the ECA, beginning with the first quarterly ECA filing after a final Commission decision approving the Settlement Agreement in this proceeding.

**V. General Reporting on the Cabin Creek Facility.**

5. The Settling Parties agree that in the next two ECA/Purchased Capacity Cost Adjustment (“PCCA”) Annual Prudence Review proceedings for calendar years 2024 and 2025, respectively, the Company will provide an update on the Cabin Creek Facility Project. This reporting will include:

- A detailed description of any work done during the year in review regarding the Cabin Creek Facility Project;
- A description of any upcoming planned outages and maintenance work;
- An update on any final punch list and close out items and their associated costs;
- A presentation of the equivalent availability factor for the Cabin Creek units for the year under review as well as the immediately prior year; and
- A presentation of the revenue requirement for the Cabin Creek facility and a presentation of the Cabin Creek Facility Project costs for the facility over the course of the year under review.

**VI. Unplanned Outage Reporting for the Cabin Creek Facility**

6. The Settling Parties agree that Public Service will provide unplanned outage reports regarding Cabin Creek on a monthly basis, similar to the approach used in Proceeding No. 22A-0345E for Comanche 3.

7. The Settling Parties agree that the Company will provide monthly reports to the Settling Parties (due 10 days after the end of each month) documenting all unplanned outages at Cabin Creek greater than 24 hours in duration or where the availability factor goes below a threshold determined by the Company and Staff for a multi-day duration.

The reporting shall commence in the third month following final Commission approval of this Settlement Agreement, and shall continue for two years from the date of final Commission approval of this Settlement Agreement.

**VII. Generation Fleet Performance**

8. Building on the approved Non-Unanimous Comprehensive Settlement Agreement in Proceeding No. 24A-0327E (2023 ECA/PCCA Annual Prudence Review) (“2023 ECA/PCCA Settlement Agreement”), the Settling Parties agree to discuss potential generation fleet performance metrics in the Company’s quarterly ECA stakeholder meetings. The Company agrees to present a potential generation fleet performance metric(s) in the next electric rate case proceeding or another appropriate proceeding by April 30, 2026 and to ask for approval of one or more metrics. The Company may not decline to present a generation fleet performance metric(s) with an explanation of why any potential metric(s) would not be feasible or appropriate at this time, which was permitted by the 2023 ECA/PCCA Settlement Agreement. In addition:

- The Settling Parties agree that the performance incentive mechanism (“PIM”) principles established by the Commission (see, e.g., Decision No. C22-0270 and Decision No. C22-0459) shall establish the boundaries for the scope, purpose, and content of any PIM under discussion.
- The Settling Parties reserve the right to request that options for fleet performance metric(s) be included in a proceeding before April 30, 2026, if an acceptable proceeding is filed before that date, as provided for in the 2023 ECA/PCCA Settlement Agreement.

- The Company will present historical data and hypothetical application of any proposed generation fleet performance metric(s) as part of its presentation to inform the consideration of the generation fleet performance metric(s).
- This commitment to present a generation fleet performance metric(s) operates in lieu of the Cabin Creek facility-specific PIM proposed by Trial Staff of the Commission in this proceeding.

### **GENERAL PROVISIONS**

9. Except as expressly set forth herein, nothing in this Settlement Agreement is intended to have precedential effect or bind the Settling Parties with respect to positions they may take in any other proceeding regarding any of the issues addressed in this Settlement Agreement. No Settling Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Settlement Agreement. Furthermore, this Settlement Agreement does not constitute agreement, by any Settling Party, that any principle or methodology contained within or used to reach this Settlement Agreement may be applied to any situation other than the above-captioned proceeding, except as expressly set forth herein.

10. The Settling Parties agree the provisions of this Settlement Agreement are just, reasonable, and consistent with and not contrary to the public interest, and should be approved and authorized by the Commission.

11. The discussions among the Settling Parties that produced this Settlement Agreement have been conducted in accordance with Rule 408 of the Colorado Rules of Evidence.

12. Nothing in this Settlement Agreement shall constitute a waiver by any Settling Party with respect to any matter not specifically addressed in this Settlement Agreement.

13. The Settling Parties agree to use good faith efforts to support all aspects of the Settlement Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Settlement Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Settlement Agreement, it will take no formal action in any administrative or judicial proceeding that would have the effect, directly or indirectly, of contravening the provisions or purposes of this Settlement Agreement. However, except as expressly provided herein, each Settling Party expressly reserves the right to advocate positions different from those stated in this Settlement Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this Settlement Agreement or its terms and conditions.

14. The Settling Parties do not believe any waiver or variance of Commission rules is required to effectuate this Settlement Agreement, but they agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's Rules and Regulations if necessary to permit all provisions of this Settlement Agreement to be approved, carried out, and effectuated.

15. This Settlement Agreement is an integrated agreement that may not be altered by the unilateral determination of any Settling Party. There are no terms,

representations or agreements among the parties which are not set forth in this Settlement Agreement.

16. This Settlement Agreement shall not become effective until the Commission issues a final decision addressing the Settlement Agreement. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party may withdraw from the Settlement Agreement and shall so notify the Commission and the other Settling Parties in writing within ten (10) days of the date of the Commission's order. In the event a Settling Party exercises its right to withdraw from the Settlement Agreement, this Settlement Agreement shall be null and void and of no effect in this or any other proceeding.

17. There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

18. This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Agreement with respect to the issues addressed by this Settlement Agreement. This Settlement Agreement may be executed and delivered electronically and the Settling Parties agree that such electronic execution and delivery, whether executed in counterparts or collectively, shall have the same force and effect as delivery of an original document with original signatures, and that each Settling Party may use such electronic or facsimile signatures as evidence of the execution and delivery of this Settlement Agreement by the Settling Parties to the same extent that an original signature could have been used.

Dated this 4th day of April, 2025.

Agreed on behalf of:

**PUBLIC SERVICE COMPANY OF COLORADO**

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**Trial Staff of the Colorado Public Utilities  
Commission**

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