Decision No. R25-0488

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0299E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER FINDING THAT THE CABIN CREEK FACILITY PROJECT WAS PRUDENT WITH UPGRADES TO BOTH GENERATING UNITS ALONG WITH AN EXPANSION OF THE FACILITY'S UPPER RESERVOIR.

RECOMMENDED DECISION GRANTING APPLICATION AS MODIFIED BY SETTLEMENT AGREEMENT

Issued Date: June 27, 2025

TABLE OF CONTENTS

I. PROCEDURAL HISTORY 2
II. RELEVANT LAW 3
III. THE TERMS OF THE SETTLEMENT AGREEMENT AND THE PARTIES' RESPECTIVE POSITIONS 4
A. The Parties' Pre-Settlement Positions 4
1. The Company 4
2. Staff 6
3. UCA 8
B. The Terms of the Settlement Agreement 10
1. Ratemaking Treatment for DOE Funding 10
2. Scope of Prudence Determination 11
3. True-Up of Liquidated Damages Under the GE Contract 11
4. Reduction in Equity Return 11
5. General Project Reporting 11
6. Unplanned Outage Reporting 12
C. The Settling Parties' Position 12
D. UCA's Position 15
IV. DISCUSSION, ANALYSIS AND CONCLUSIONS 18
A. Request to Approve Settlement Agreement 18

B. Request to Waive Response Time 23
V. TRANSMITTAL OF THE RECORD 23
VI. ORDER 24
A. The Commission Orders That: 24

I. PROCEDURAL HISTORY[1]

1. Public Service Company of Colorado ("Public Service" or the "Company") initiated this Proceeding on July 1, 2024, by filing its Verified Application (the "Application") with the Colorado Public Utilities Commission ("Commission" or "PUC") seeking an order finding that its Cabin Creek Facility Project ("Cabin Creek") was prudent.

2. Decision No. R24-0641-I, issued September 6, 2024, among other things, acknowledged the interventions of right filed by the Office of the Utility Consumer Advocate ("UCA") and the Trial Staff of the Colorado Public Utilities Commission ("Staff") on July 18, 2024 and August 9, 2024, respectively.

3. By Decision No. R24-0709-I, issued on October 3, 2024, the Administrative Law Judge ("ALJ") then-assigned to this Proceeding, among other things, set a procedural schedule to govern this Proceeding which was clarified by the undersigned ALJ through Decision No. R25-0162-I, issued March 6, 2025.[2] Among other things, Decision No. R24-0709-I extended the deadline for a final Commission decision in this Proceeding through August 22, 2025 pursuant to § 40-6-109.5(4), C.R.S., set the deadline for the filing of any settlement agreement or testimony for April 4, 2024, scheduled a hearing in this Proceeding for April 17-18, 2025, and set the deadline for the filing of any statements of position for May 9, 2025.

[1] Only the procedural history necessary to understand this Decision is included.
[2] An Errata Notice for Decision No. R25-0162-I was issued on March 18, 2025.

4. On April 4, 2025, Public Service, on behalf of itself and Staff (together, the "Settling Parties") filed its Motion to Approve Non-Unanimous Comprehensive Settlement Agreement and Unopposed Request to Shorten Response Time ("Motion"). With the Motion, Public Service filed the Highly Confidential Non-Unanimous Comprehensive Settlement Agreement ("Settlement Agreement").[3]

5. On April 14, 2025, The Utility Consumer Advocate's Response to Public Service Company of Colorado's Motion to Approve Non-Unanimous Comprehensive Settlement Agreement ("Response") was filed by UCA.

6. On April 17, 2025, the undersigned ALJ convened an evidentiary hearing in this matter. During the hearing, the Settling Parties addressed their support of the Settlement Agreement though the testimony of Erin O'Neill, Jason K. Peuquet, Darin Schottler, and Nicholas Detmer, and UCA addressed its objection to the Settlement Agreement through the testimony of Chris Neil. All parties appeared and were represented by counsel.

7. On May 9, 2025, the Statement of Position of the Office of the Utility Consumer Advocate ("UCA's SOP") and the Joint Statement of Position of Public Service Company of Colorado and Trial Staff of the Public Utilities Commission ("The Settling Parties' SOP") were filed by UCA and the Settling Parties, respectively.

II. RELEVANT LAW

8. Pursuant to § 40-3-101(1), C.R.S., "[a]ll charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable…"

[3] Public Service also filed a non-confidential version of the Settlement Agreement with a redacted portion of ¶ III.3., p. 3 of the Settlement Agreement.

9. Commission decisions approving settlement agreements need to be deemed just and reasonable by the Commission.[4]

10. Rule 1408(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR"), 723-1 states:

> The Commission encourages settlement of contested proceedings. Any Settlement Agreement shall be reduced to writing and shall be filed along with a motion requesting relief with regard thereto. Those supporting approval of a Settlement Agreement are encouraged to attest that they are not aware of a Settlement Agreement's violation of any applicable laws and to file testimony providing adequate facts (i.e., not in the form of conclusory statements) demonstrating that the agreement meets the applicable standard, be it an applicable law, Commission decision, Commission rule, or in the public interest.

III. THE TERMS OF THE SETTLEMENT AGREEMENT AND THE PARTIES' RESPECTIVE POSITIONS

A. The Parties' Pre-Settlement Positions

1. The Company

11. As set forth in Hearing Exhibits 100-109, Public Service asserted that the Cabin Creek Facility Upgrade Project (including upgrades to Units A and B and an expansion of the upper reservoir) was prudently conceived, reasonably executed, and ultimately beneficial to its electric system and ratepayers. The Company stated that it "examined the alternatives and determined that an upgrade to both generating units, along with an expansion of the facility's upper reservoir, was necessary and the most economically beneficial option for our customers."[5]

[4] *Holcim U.S. Inc. v. Colorado Pub. Utilities Comm'n*, 562 P.3d 55, 60 (Colo. 2025). (affirming the PUC's approval of a Settlement Agreement related to cost recovery mechanisms and emphasizing the Commission's role in ensuring that such agreements are just and reasonable); see also, § 40-6-115(3), C.R.S. (proscribing that upon review of a Commission decision by the district court, the district court shall determine whether the Commission decision is "just and reasonable").

[5] Hr. Ex. 100, Verified Application, at 1-2.

12. Public Service awarded the project to Alstom Renewables LLC, later GE Renewables US LLC, ("Alstom/GE") following a formal request for proposal and competitive bid evaluation. The Company testified that "Alstom Renewables proposed a superior technical offering compared to those of the competing bidders, providing the best overall performance" and "a good safety program."[6] Furthermore, "Alstom Renewables provided the overall lowest evaluated price."[7]

13. In response to criticisms concerning project delays and cost overruns, Public Service emphasized the unforeseeable and uncontrollable nature of the challenges it encountered. Specifically, the Company explained that "the total budget and original schedule duration for the Project increased in part due to discovery work encountered on Units A and B after the units were disassembled, in addition to scope changes to the Upper Reservoir Expansion."[8]

14. The Company disputed intervenors' methodologies for estimating the cost of lost capacity associated with the extended outage. It contended that "only actual capacity purchases are a valid calculation of any lost capacity value."[9] Public Service estimated the total cost of such purchases attributable to the outage at "approximately $1.3 million for all of 2019–2023, and only $592,000 for the period 2021–2023 analyzed by Staff."[10]

15. Public Service expressly rejected Staff's reliance on the Surplus Capacity Credit ("SCC") as a means to estimate lost value. Mr. Landrum testified that "the SCC should not be applied in this instance" because "it is a forward-looking value that inherently assumes new-build capacity has to be procured to meet capacity needs."[11] He further emphasized that "the two

[6] Hr. Ex. 102, Direct Testimony of Darin W. Schottler, Rev. 1, at 25:8-12.
[7] *Id*. at 25:18–19.
[8] *Id*. at 23:7–10.
[9] Hr. Ex. 109, Rebuttal Testimony of Jon T. Landrum, at 12:7-8.
[10] Hr. Ex. 107, Rebuttal Testimony of Nicholas J. Detmer, Rev. 1, at 10:21-22.
[11] Hr. Ex. 109, Rebuttal Testimony of Jon T. Landrum, at 9:15-17.

methodologies that use the SCC to imply a lost capacity value are not a correct usage of that metric and not reflective of the events that transpired."[12]

16. The Company also addressed what it characterized as a clerical error in certain early filings that referenced a 360 MW output. Mr. Peuquet clarified that the planned upgrade for the facility was 36.6 MW ("megawatt"), for a total capacity of 336.6 MW post-upgrade, and that "the 360 MW generating capacity number was not used in any of the engineering studies for the Upgrade Project," stating that "this was an honest mistake that had no actual impact to the design or construction of the Upgrade Project or its value to the Company's system."[13]

17. Public Service concluded that, viewed in the context of a complex and multi-year engineering undertaking, the decisions made at each stage of the Cabin Creek Facility Project were reasonable and prudent based on the information available at the time.

2. Staff

18. As set forth in Hearing Exhibits 300, 301, and 302, Staff took the position that Public Service failed to prudently execute the Cabin Creek Facility Upgrade and Expansion Project. Staff presented a unified analysis from multiple expert witnesses that identified critical deficiencies in the planning, oversight, and execution of the project, which collectively justified cost disallowance and a denial of a presumption of prudence.

19. Staff argued that the Company "recovered millions from ratepayers in construction work in progress ('CWIP') during periods where ratepayers received no benefit from the projects," noting that the Company began cost recovery "well before the project in-service dates" and prior to the point at which the units were "used and useful."[14] Staff Witness Erin O'Neill underscored

[12] *Id*. at 12:19-21.
[13] Hr. Ex. 105, Rebuttal Testimony of Jason J. Peuquet, at 67:9-10, 67:19-68:2.
[14] Hr. Ex. 300, Answer Testimony of Erin O'Neill, at 33:1-6.

that "the Company's planning and construction of the Cabin Creek Project were not executed in a reasonably diligent manner, and thus were not prudent."[15] She explained that Staff's prudence evaluation was not based on hindsight but instead "substantial discussion and evidence of the Company's lack of project planning, due diligence and execution."[16]

20. Staff Witness Manjari Bhat, offering an engineering-based assessment, identified "systemic issues in planning, design, execution, and project management" that resulted in excessive change orders, project delays, and cost overruns.[17] She highlighted that "[t]he excessive number of change orders in the Cabin Creek project strongly suggests that the planning, design, and execution phases lacked the necessary oversight and planning."[18] Staff faulted the Company for failing to incorporate foreseeable regulatory hurdles into its planning, such as lead abatement requirements and Federal Energy Regulatory Commission approvals, concluding that "[f]ailure to do so resulted in an additional, unplanned cost" and significant delays.[19]

21. As a result of these failures, Staff Witness O'Neill recommended "a conservative disallowance of $21.73 million," calculated as "half of $43.46 million," to be returned to ratepayers through the Energy Cost Adjustment ("ECA") over a three-year period.[20] This amount accounted for replacement power and lost capacity over the 2021 to 2023 period and excluded $5 million in liquidated damages already refunded to customers.[21] The recommendation was described as conservative, because it omitted any disallowance for the "project cost overruns and

[15] *Id*. at 17:8-9.
[16] *Id*. at 17:11-12.
[17] Hr. Ex. 302, Answer Testimony of Manjari K. Bhat, Rev. 1, at
[18] *Id*. at 32:7-9.
[19] *Id*. at 21:13-22:9, 22:13-23:15, 32:18-33-7.
[20] Hr. Ex. 300, Answer Testimony of Erin O'Neill, at 55:8-10.
[21] *Id*. at 55:10-11.

base rate increases during the construction period," and because Staff permitted a two-year grace period before disallowing any delay-related costs.[22]

22. Staff also presented revenue requirement calculations from Witness Ronald Lay, who estimated that Public Service recovered approximately $44.7 million from ratepayers for the entire Cabin Creek Facility between July 1, 2018, and December 31, 2024.[23] Mr. Lay's calculations relied in part on data provided by the Company and, where such data was incomplete, on estimates developed by Staff.[24]

23. In sum, Staff's position was that the Company failed to act with the level of foresight, diligence, and competency required of a reasonable utility undertaking a major capital project. Staff collectively concluded that "ratepayers [should be] compensated for the costs they incurred as a result of the Company's poor planning and execution,"[25] and recommended specific financial remedies to address this imprudence.

3. UCA

24. As set forth in Hearing Exhibits 200 and 201, UCA took the position that Public Service failed to demonstrate that the Cabin Creek Facility Upgrade Project was prudently executed. UCA's position emphasized substantial cost overruns, extended outages, and engineering misjudgments, which collectively rendered the project imprudent.[26]

25. UCA challenged the prudence of Public Service's decision to pursue an 11-blade runner design rather than opting for a less ambitious alternative such as a 7- or 9-blade configuration or replacing in-kind with the existing 6-blade design. Mr. Neil stated that "PSCo

[22] *Id*. at 56:5-6, 56:13-16.
[23] Hr. Ex. 301, Answer Testimony of Ronald Lay, at 6:1-8.
[24] *Id*. at 12:16-18.
[25] Hr. Ex. 300, Answer Testimony of Erin O'Neill, at 57:16-17.
[26] *See, generally*, Hr. Ex. 200, Answer Testimony of Chris Neil, Rev. 1 and Hr. Ex. 201, Cross-Answer Testimony of Chris Neil.

should have selected a design with 7 or 9 blades as stated in the HDR Report or replaced in kind with 6 blades like in 1979" and concluded that "installing 11 blades was especially inappropriate when the Upgrade was not able to achieve the 360 MW that was the justification of the Project to the Commission."[27]

26. The UCA further argued that PSCo failed to conduct an adequate initial assessment of the required work. The testimony identified that "PSCo's initial assessment of the work required was inadequate and contributed to the Project's extended outages and exceeding the budget" and highlighted that "the Company and GE processed a total of 266… change order requests ('CORs'), a large number of requests for a project of this size," which evidenced poor planning.[28]

27. Based on various approaches to quantifying losses, UCA recommended disallowances of costs associated with the project. The estimated disallowances included lost energy benefits during the outage, ranging from $25.1 million to $55.9 million (with an average of $35.9 million); lost capacity benefits of $53.2 million to $57.2 million; and $6.4 million in shareholder earnings accrued while the facility was offline.[29] Mr. Neil also estimated a lost capacity value of approximately $18.2 million due to the facility not achieving the 360 MW target set forth in the CPCN.[30]

28. In his Cross-Answer Testimony, Mr. Neil rebutted Staff Witness Erin O'Neill's estimated lost capacity value of $7.7 million, asserting that it was incomplete because it omitted transmission reservation costs. He cited a discovery response indicating that "the total of the Company's expenditures on transmission reservations and short-term capacity purchases for the

[27] Hr. Ex. 200, Answer Testimony of Chris Neil, Rev. 1 at 34:4-9.
[28] *Id*. at 30:23-24, 31:2-5.
[29] *Id*. at 34:16-21, 35:3-4.
[30] *Id*. at 35:1-2.

2019 through 2023 period is $16,898,384."[31] Mr. Neil contended that the full impact of PSCo's failure should include capacity costs for 2024, reasoning that "PSCo could not immediately turn off and on these purchases and transmission reservations, and likely needed to have capacity availability for 2024 in case the units were not online by then."[32] He reiterated that "the capacity benefit was by far the largest lifetime benefit for the plant" and that using low-end estimates would make it "very unlikely that benefit would have been enough to justify the plant Upgrade."[33]

29. Taken together, UCA's testimony, as set forth in Hearing Exhibits 200 and 201, advocated significant cost disallowances based on Public Services' alleged imprudence in engineering decisions, failure to manage construction effectively, and inaccurate capacity benefit estimates. UCA asserted that the burden of proof rested with Public Service and that the Commission should reject the Company's request for a prudence determination.

B. The Terms of the Settlement Agreement

30. As more fully set forth in the Settlement Agreement, the Settling Parties agree to the following terms:[34]

1. Ratemaking Treatment for DOE Funding[35]

31. The Settling Parties agree that if Public Service receives up to $5 million in Department of Energy ("DOE") benefits, the entire amount will be returned to customers through the first quarterly ECA filing following either receipt of the funds or a final Commission decision approving the Settlement, whichever occurs later.

[31] Hr. Ex. 201, Cross-Answer Testimony of Chris Neil at 3:16-17, 3:20-21, 4:3-6.
[32] *Id*. at 4:11-13.
[33] *Id*. at 5:1-4.
[34] The following is intended as a summary of main terms of the Settlement Agreement, rather than a full recitation of the same. The General Provisions section of the Settlement Agreement, which are contained in pgs. 6-8 of the Settlement Agreement are not summarized below.
[35] Hr. Ex. 110, Settlement Agreement, at p. 2.

2. Scope of Prudence Determination[36]

32. The Agreement clarifies that the Commission's prudence determination applies only to Cabin Creek Facility Project costs incurred through April 30, 2024. Any costs incurred after that date will not benefit from a presumption of prudence.

3. True-Up of Liquidated Damages Under the GE Contract[37]

33. The Company agrees to provide customers a credit reflecting a true-up between the actual liquidated damages recovered from Alstom/GE under the upgrade contract and the $5 million in liquidated damages already credited to customers. This credit will also be returned via the first ECA filing after a final Commission decision.

4. Reduction in Equity Return[38]

34. Public Service agrees to apply an $8 million reduction in equity return related to the Cabin Creek Facility Project over a five-year period. This reduction will be implemented through 20 equal quarterly revenue offsets via the ECA mechanism, beginning with the first ECA filing following Commission approval.

5. General Project Reporting[39]

35. For the 2024 and 2025 ECA/Purchased Capacity Cost Adjustment Annual Prudence Review proceedings, the Company must report on:

- Work performed at the Cabin Creek facility during the review year;
- Planned outages and maintenance;
- Final punch list and close-out items and costs;
- Equivalent availability factor for the review and preceding year; and

[36] *Id*. at p. 2-3.
[37] *Id*. at p. 3.
[38] *Id*.
[39] *Id*. at p. 4.

- Cabin Creek revenue requirement and capital cost tracking.

6. Unplanned Outage Reporting[40]

36. Beginning in the third month following approval, Public Service must provide monthly unplanned outage reports for Cabin Creek. Reports are to document outages lasting more than 24 hours or during which the availability factor falls below a threshold jointly determined by Staff and the Company. This requirement will remain in effect for two years.

C. The Settling Parties' Position

37. The Settling Parties jointly assert that the Settlement Agreement "is just, reasonable, and in the public interest," and request that it be approved "without modification."[41] They emphasize that the Settlement Agreement resolves all contested issues between them and reflects a "reasonable compromise based on the record that takes into account the overall length of the Project, the circumstances of this unique facility, Staff's concerns in Answer Testimony, and the evidence presented by the Company in its Rebuttal Testimony."[42] According to the Settling Parties, the agreement not only incorporates substantial financial concessions for ratepayers but also addresses future oversight and transparency.[43]

38. In support of the Settlement Agreement, the Settling Parties highlight that the proceeding was "thoroughly litigated," with the Company submitting "180 pages of Direct Testimony," Staff providing "133 pages of Answer Testimony," and Public Service responding with "247 pages of Rebuttal Testimony."[44] The discovery process produced over 10,000 pages of documentation. While the parties' positions "diverged significantly," Public Service and Staff

[40] *Id*. at pp. 4-5.
[41] The Settling Parties' SOP at p. 1.
[42] *Id*. at p. 2.
[43] *Id*.
[44] *Id*. at p. 1.

were ultimately able to reach agreement on all disputed issues between them.[45] The Settling Parties describe the Settlement Agreement as resolving "every aspect of the Project from its origins more than 15 years ago."[46]

39. As to substance, the Settling Parties emphasize that the $8 million equity return reduction to be credited to customers over five years is a reasonable compromise grounded in the record. According to the Settling Parties' SOP, the Settlement Agreement "provides for . . . a reduction in the equity return on the Project over a five-year period of $8 million" and represents "a reasonable compromise based on the record that takes into account the overall length of the Project, the circumstances of this unique facility, Staff's concerns in Answer Testimony, and the evidence presented by the Company in its Rebuttal Testimony."[47] At the hearing on April 17, 2025, Staff witness Erin O'Neill explained that the provision "reduces, effectively, the return that [the Company] get[s] for this project," such that, "rather than earning at the full [weighted average cost of capital] . . . they would earn less than that.[48] Company witness Jason J. Peuquet characterized the $8 million equity return reduction as "a reasonable compromise that acknowledges the history and complexity of the Project" and explained that it "resolves all outstanding issues in the proceeding among the Settling Parties; further, it benefits the Commission by resolving the full universe of issues in this proceeding."[49]

40. The Settling Parties also emphasize the DOE funding provision, under which Public Service "will return the entirety of the up-to $5 million DOE benefit" to customers via the ECA if such funds are received.[50] According to Mr. Peuquet, the DOE funding provision "aligns with the

[45] *Id*.
[46] *Id*.
[47] *Id*. at p. 2.
[48] Hr. Tr. April 17, 2025, 11:23–12:2.
[49] Hr. Ex. 111, Peuquet Settlement Testimony, at 9:15-23.
[50] The Settling Parties' SOP, at p. 2; Settlement Agreement § I.

recommendation in my Rebuttal Testimony to return any funds from DOE to customers as a direct reduction on their bills via the ECA. . . . Returning the DOE benefit to customers, if it is received, will directly benefit the customers."[51]

41. The Settlement Agreement requires the Company to provide "a credit to customers in the amount of a true-up between the actual liquidated damages collected under the… contract with Alstom/GE and the $5 million already advanced to customers," yielding additional ratepayer credit.[52] This true-up was identified in Mr. Peuquet's Settlement Testimony as a means to align financial outcomes with actual results under the vendor contract.[53]

42. The Settling Parties further assert that the Settlement Agreement strengthens oversight and transparency through enhanced reporting. This includes "additional reporting about Cabin Creek in upcoming annual review proceedings" and new obligations to report "unplanned outages at the facility."[54] The agreement also requires the parties to "discuss potential generation fleet performance metrics in the Company's quarterly Electric Commodity Adjustment stakeholder meeting," with a commitment by the Company to present such metrics "in the next rate case or another proceeding by April 30th, 2026."[55] Staff witness O'Neill testified that this provision allows stakeholders to "appropriately provide an incentive for operations, without an incentive to spend too much money on maintenance," noting that the Commission has not previously developed performance incentive mechanisms for facilities of this type.[56]

43. The Settling Parties strongly oppose UCA's competing position, which seeks disallowances of between $71 million and $138 million. They argue that UCA's theories "lack

[51] Hr. Ex. 111, Peuquet Settlement Testimony, at 6:5-21.
[52] Settlement Agreement § III; The Settling Parties' SOP, at pp. 2, 6.
[53] Hr. Ex. 111, Peuquet Settlement Testimony, at 7:5-13.
[54] The Settling Parties' SOP, at p. 2.
[55] Hr. Tr. April 17, 2025, 12:7–13; Settlement Agreement § VII.
[56] Hr. Tr. April 17, 2025, 13:20–25.

merit and are untethered from the factual record."[57] Public Service characterizes UCA's claims as based on "new prudence theories raised at the evidentiary hearing" that were not subject to prior discovery and are unsupported by the record.[58] Staff declines to take any position on the arguments made by the Company with regard to UCA's requested disallowances, but states that it supports approval of the Settlement Agreement without the modifications suggested by UCA. Staff states that it believes the agreement is just, reasonable, and in the public interest.[59]

44. Finally, the Settling Parties argue that approval of the Settlement Agreement will "promote administrative efficiency" and avoid the need for further costly litigation.[60] They emphasize that the Settlement Agreement was negotiated at arm's length and reflects the informed judgment of experienced parties.[61] "[T]he Settling Parties [have] pledged [their] support for the issues resolved in the Settlement Agreement and has agreed to defend the Settlement Agreement in full."[62]

45. In summary, the Settling Parties maintain that the Settlement Agreement provides meaningful benefits to customers, rests on a robust record, and satisfies the Commission's standards for approving negotiated settlements. The Settling Parties, therefore, request that the ALJ approve the Settlement Agreement without modification.

D. UCA's Position

46. UCA opposes the Settlement Agreement on the grounds that it "fails to adequately address the significant costs passed on to customers that can be traced back to the Company's

[57] The Settling Parties' SOP, at p. 15.
[58] *Id*. at p. 23.
[59] *Id*. at pp. 15-16.
[60] Motion at p. 6.
[61] *Id*. at pp. 2-3, 5, 6.
[62] *Id*. at p. 2.

imprudent actions."[63] UCA contends that the Settlement Agreement fails to sufficiently account for imprudently incurred costs associated with the Cabin Creek Facility Project. In its response to the Company's motion, UCA states that it "opposes PSCo's Motion to Approve the Non-Unanimous Comprehensive Settlement Agreement for the reasons outlined in its pre-filed testimony."[64] UCA further developed its objections to the Settlement Agreement during the evidentiary hearing through the testimony of Mr. Neil and in UCA's SOP.[65]

47. At the evidentiary hearing, UCA witness Chris Neil testified that UCA is not a party to the settlement and maintains that "UCA believes there should still be a disallowance related to the Cabin Creek project." He further confirmed, "UCA recommends the A.L.J. add on some additional disallowances."[66]

48. UCA does not oppose all provisions of the Settlement Agreement. At the evidentiary hearing, Mr. Neil acknowledged that UCA "certainly" supports the provision requiring the return of up to $5 million in DOE funds to customers,[67] and expressed no objection to the customer credit mechanism related to liquidated damages under the GE contract or to the proposed reporting provisions regarding the Cabin Creek facility and unplanned outages.[68]

49. However, UCA opposes the limitation in Section II of the Settlement Agreement that restricts the Commission's prudence determination to costs incurred through April 30, 2024. Mr. Neil testified that UCA "opposes that term,"[69] explaining that limiting the scope of the

[63] UCA's SOP at p. 2.
[64] Response at 1.
[65] UCA's SOP at p. 5-6; Hr. Tr., pp. 125-206.
[66] Hr. Tr. April 17, 2025, 128:25-129:1-8.
[67] *Id*., p. 129:13-22.
[68] *Id*., pp. 130:16-131:1, 131:9-15.
[69] *Id*., p. 130:6-7.

Commission's prudence review is inappropriate given the evidence of potential ongoing imprudence.[70]

50. UCA also challenges the adequacy of the $8 million equity return reduction in the Settlement Agreement. Mr. Neil testified, "it doesn't begin to recover the extra costs to customers that was incurred by the extended outage of Cabin Creek," and added, "additional dollars are certainly appropriate," regardless of whether they are provided through a further equity return reduction or another mechanism.[71]

51. In UCA's SOP, UCA argues that the Settlement Agreement is not in the public interest. UCA states that [t]he "Company could have and should have taken steps to minimize Project costs for ratepayers." Because it failed to do that, imprudent costs must be disallowed."[72] UCA further asserts that "important evidence bearing on the Company's prudence offered at the evidentiary hearing was not explicitly addressed in the [S]ettlement [A]greement."[73]

52. UCA recommends that the Commission "disallow any costs which can be reasonably attributed to imprudence on the part of PSCo and its prime Engineering, Procurement and Construction ('EPC') contractor General Electric ('GE')" and urges the Commission to reject or modify the Settlement Agreement accordingly.[74]

53. Although UCA did not file new testimony in response to the Settlement Agreement, Mr. Neil testified that UCA's objections are grounded in his pre-filed testimony, which the UCA incorporated by reference in the Response.[75] UCA maintains that the Settlement Agreement, as proposed, fails to adequately redress the harms caused by Public Service's imprudent actions,

[70] UCA's SOP at p. 12.
[71] Hr. Tr. April 17, 2025, 132:2-15.
[72] UCA's SOP at p. 25.
[73] *Id*. at p. 27.
[74] *Id*. at p. 4.
[75] Response at p. 1; Hr. Tr. April 17, 2025, 127:11-19.

including extended delays and cost overruns associated with the Cabin Creek Project, and therefore does not serve the public interest.[76]

IV. DISCUSSION, ANALYSIS AND CONCLUSIONS

A. Request to Approve Settlement Agreement

54. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon "the proponent of an order."[77] As the parties to the Settlement Agreement and the proponents of the Motion, Public Service and Staff bear the burden of proof.[78]

55. In evaluating whether to approve the Settlement Agreement, the undersigned ALJ applies the legal standard set forth in Rule 1408(a) of the Commission's Rules of Practice and Procedure, 4 CCR, 723-1, which requires that settlement agreements be shown to be "in the public interest." While settlements are favored and may promote administrative efficiency, they must be supported by evidence sufficient to allow the Commission to conclude that the resulting rates and regulatory outcomes are just, reasonable, and lawful.[79]

56. While the Commission encourages settlements,[80] it retains an independent obligation to ensure that rates are just and reasonable.[81] The ALJ must therefore examine whether

[76] UCA's SOP at pp. 1-2, 12-13.
[77] Section 24-4-105(7), C.R.S.
[78] *Id*.; § 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1.
[79] *CF&I Steel, L.P. v. Pub. Utilities Comm'n of State of Colo*., 949 P.2d 577, 584 (Colo. 1997) (in a case involving a settlement-based rate change, holding that "[t]he PUC has the duty to examine proposed rates, and to determine whether the tolls, fares, rentals, charges, or classifications for service are unjust, unreasonable, discriminatory, or preferential, or in any way violate any provision of law); *see also*, §§ 40-3-101(1), C.R.S. (proscribing that "[a]ll charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable.") and 40-6-111(2), C.R.S. (proscribing that the commission shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, that it finds just and reasonable.").
[80] *See* § 40-6-109.5, C.R.S.
[81] *See CF&I Steel*, 949 P.2d at 584; *Caldwell v. Pub. Utilities Comm'n of State of Colo*., 692 P.2d 1085, 1089 (Colo. 1984) (holding that the Commission's post-remand exclusion of certain advertising costs was consistent with its duty as a legislative agent to act in the public interest and did not improperly exceed the scope of remand).

the record evidence supports the settlement's terms and the relief requested, consistent with applicable law.

57. The Commission does not require that a settlement represent the best possible outcome or that it resolve every issue in favor of one party or another. Rather, the Commission must consider whether the settlement falls within the range of reasonable outcomes supported by the record and whether it is in the public interest.[82]

58. The record reflects that the Settlement Agreement resolves all disputed issues between Public Service and Staff and that it incorporates several significant financial and reporting concessions. These include an $8 million reduction in the equity return related to the Cabin Creek Facility Project, the return of up to $5 million in potential DOE grant funding, a customer credit reflecting a true-up of liquidated damages recovered under the GE contract, and new reporting obligations regarding unplanned outages and project performance metrics. The Settling Parties contend that these provisions provide meaningful redress for ratepayers while reflecting a reasonable compromise grounded in the evidentiary record.

59. The undersigned ALJ notes that Staff's participation in and support of the Settlement Agreement, while relevant, is not by itself sufficient to establish that the agreement is just, reasonable, or in the public interest.

[82] *See Glustrom v. Colorado Pub. Utilities Comm'n*, 2012 CO 53, ¶ 12, 280 P.3d 662, 666 (affirming the Commission's ruling that the settlement "will result in rates that are just and reasonable" and reflected a "meaningful reduction" from what the utility initially sought); *Colorado-Ute Elec. Ass'n v. PUC*, 760 P.2d 627, 640 (Colo. 1988) ("When two equally reasonable courses of action are open to the Commission, the reviewing court should not substitute its judgment for that of the Commission in selecting the appropriate alternative" (citing *City of Montrose v. Public Utilities Comm'n*, 629 P.2d 619, 623 (Colo.1981)); Decision No. C19-0367 mailed in Proceeding No. 18A-0905E on April 25, 2019 at p. 14 (approving a non-unanimous comprehensive settlement agreement the Commission has found to have "provide[d] significant protections to customers and result in a reasonable overall balance"); Decision No. C09-0595 mailed in Proceeding No. 08S-520E on June 9, 2009, at p. 25 (finding that for regulatory reporting purposes, a certain negotiated return on investment rate falls within "a zone of reasonableness," based on testimony regarding cost of capital).

60. UCA, the only party not to join the Settlement Agreement, opposes its approval. UCA argues that the agreement fails to account for a broader range of imprudently incurred costs and does not reflect the magnitude of ratepayer harm caused by Public Service's alleged mismanagement of the Cabin Creek Project. UCA's position is grounded in the pre-filed and hearing testimony of its witness, Mr. Chris Neil, and further supported by its Response to the Motion to Approve the Settlement Agreement and Statement of Position. Mr. Neil testified that "UCA believes there should still be a disallowance related to the Cabin Creek project" and that "additional dollars are certainly appropriate," beyond the $8 million equity return reduction contemplated in the Settlement Agreement.[83] UCA also objects to Section II of the Settlement Agreement, which limits the Commission's prudence determination to costs incurred through April 30, 2024, arguing that such a limitation is inappropriate in light of ongoing issues and post-cutoff spending.[84]

61. UCA recommended larger disallowances based on its analysis of capacity purchase costs and broader system impacts associated with the extended outage at the Cabin Creek Facility. While the undersigned ALJ finds that UCA raised legitimate concerns, the evidentiary record does not compel adoption of the specific disallowance amounts proposed by UCA. Instead, the Settlement Agreement reflects a reasonable compromise that resolves these disputed issues in light of the full evidentiary record. The record includes quantified analyses of customer impacts during the outage,[85] which demonstrate that the $8 million equity return reduction is reasonably within the range of plausible outcomes. The undersigned ALJ finds that this amount, though not a precise

[83] Hr. Tr. April 17, 2025, 128:25-129:3, 132:14-15.
[84] *Id*., 129:23-130:7.
[85] *See e.g.*, Hr. Ex. 200, Answer Testimony of Chris Neil, Rev. 1 at 26–27; Hr. Ex. 300, Answer Testimony of Erin O'Neill, at 30-38.

calculation of harm, appropriately balances competing positions and reasonably addresses the financial impact of the outage on customers.

62. While UCA's position highlights areas of potential concern, the ALJ notes that Commission proceedings involving settlements are not required to resolve every potential disallowance raised in pre-filed testimony. Rather, the Settlement must fall within the range of reasonably supported outcomes based on the full record, including contested testimony and cross-examination.[86]

63. In weighing the competing testimony, the ALJ finds that while UCA's concerns are reasonably well-articulated and largely supported by analysis, the evidentiary record does not compel the level of disallowance UCA proposes. Mr. Neil's testimony identifies legitimate concerns regarding planning, oversight, and cost impacts, but it relies on modeling assumptions and retrospective judgments that are, at times, contested or not fully substantiated in the record. In contrast, the testimony offered by the Settling Parties, including that of Staff witness Erin O'Neill and Company witness Jason Peuquet, presents a comprehensive and internally consistent justification for the $8 million equity return reduction. The ALJ finds the Settling Parties' position to be a reasonable compromise, grounded in the record and consistent with the Commission's preference for approving settlements that fall within a supported range of outcomes, even if not resolving every claim raised by UCA.

64. Having reviewed the entirety of the record, including the direct, answer, rebuttal, and cross-answer testimonies; hearing transcript; the Settlement Agreement; and the parties' respective statements of position, the ALJ finds and concludes that the Settlement Agreement is in the public interest and should be approved without modification. While UCA raises legitimate

[86] *See* Rule 1408(a) of the Rules of Practice and Procedure, 4 CCR 723-1.

concerns regarding the scope of prudence review and the adequacy of the financial remedies, the ALJ concludes that the Settlement Agreement reflects a balanced and reasonable resolution of the issues supported by substantial evidence for the reasons discussed below.

65. First, as discussed above in the section entitled Settling Parties' Position, the $8 million equity return reduction is supported by the record and reflects a material financial benefit to ratepayers. Staff witness Erin O'Neill testified that the reduction "effectively… [reduces] the return that [the Company] get[s] for this project" and lowers the Company's cost recovery below its authorized weighted average cost of capital.[87] Mr. Peuquet characterized the equity return reduction as "a negotiated compromise that acknowledges the history and complexity of the Project."[88] Although the $8 million equity return reduction does not match the larger disallowances proposed by UCA, the Settlement represents a litigation-based compromise. The ALJ credits the Settling Parties' testimony that the amount reasonably accounts for Staff's concerns and is supported by the evidentiary record in this Proceeding.

66. Second, the Settlement Agreement requires Public Service to return any DOE grant funds it receives, up to $5 million, directly to ratepayers through the ECA. Mr. Peuquet testified that this provision "aligns with the recommendation in my Rebuttal Testimony" and "will directly benefit the Company's customers."[89] UCA does not object to this provision.

67. Third, the Settlement Agreement enhances transparency and accountability through mandatory reporting on project performance, unplanned outages, and generation fleet metrics. These provisions are prospective in nature and serve to reduce the likelihood of recurrence of the kinds of project execution failures that contributed to the current dispute.

[87] *Id*., 10:21-12:2.
[88] Hr. Ex. 111, Peuquet Settlement Testimony, at 9:4-16.
[89] *Id*., at 6:15-16, 6:21-7:1.

68. Finally, while the Settlement Agreement limits the prudence determination to costs incurred through April 30, 2024, this limitation is not inherently unreasonable. The ALJ finds that the cutoff date reasonably corresponds with the close of the project's major construction phase and represents a logical endpoint for the scope of regulatory review. Should imprudence arise in future operations or additional costs be incurred, the Commission retains full authority to evaluate such matters in future rate proceedings or prudence reviews.

69. In sum, while UCA's position presents a credible and good-faith challenge, the ALJ finds and concludes that the Settlement Agreement, taken as a whole, is just, reasonable, and in the public interest. The proposed financial remedies, combined with enhanced oversight provisions, provide meaningful value to ratepayers and adequately respond to the deficiencies identified in the record.

70. Therefore, based on the foregoing, the undersigned ALJ will grant the Settling Parties' request to approve the Settlement Agreement, approve the Settlement Agreement without modification; and grant the Application, as modified by the Settlement Agreement, as ordered below.

B. Request to Waive Response Time

71. Because the UCA filed a response to the Motion, and the deadline for responses has otherwise expired, the Settling Parties' request to waive response time will be denied as moot.

V. TRANSMITTAL OF THE RECORD

72. 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.

VI. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, The Motion to Approve Non-Unanimous Comprehensive Settlement Agreement and Unopposed Request to Shorten Response Time ("Motion"), filed April 4, 2025, by Public Service Company of Colorado ("Public Service" or the "Company") on behalf of the Company and Trial Staff of the Colorado Public Utilities Commission ("Staff") is denied as moot with respect to the request to waive Response time to the Motion.

2. Consistent with the discussion above, the Motion is granted as to the request to approve the Highly Confidential Non-Unanimous Comprehensive Settlement Agreement ("Settlement Agreement") that was filed contemporaneously with the Motion on April 4, 2025, by Public Service.

3. Consistent with the discussion above, the Settlement Agreement, which is attached to this Decision, and incorporated herein as Attachment A, is approved.

4. Consistent with the discussion above, the Verified Application, filed by Public Service on July 1, 2024, as modified by the Settlement Agreement, is granted.

5. Proceeding No. 24A-0299E is closed.

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.

   a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

   b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a

transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director