

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 24A-0380EG

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IN THE MATTER OF THE VERIFIED APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPRVAL OF DEFERRED ACCOUNTING TREATMENT FOR COSTS ASSOCIATED WITH CHANGES IN PREMIUMS FOR EXCESS LIABILITY INSURANCE AND REQUEST FOR EXPEDITED TREATMENT.

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**COMMISSION DECISION GRANTING  
APPLICATION WITH MODIFICATIONS**

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Issued Date: January 24, 2025  
Adopted Date: January 15, 2025

**TABLE OF CONTENTS**

I.	BY THE COMMISSION .....	2
A.	Statement .....	2
B.	Background.....	2
C.	Legal Standard.....	4
D.	Summary of Public Service’s Application .....	5
E.	Parties’ Positions .....	7
1.	Public Service.....	7
2.	Staff .....	8
3.	UCA .....	10
4.	CEC .....	10
F.	Findings and Conclusions.....	12
II.	ORDER.....	14
A.	The Commission Orders That: .....	14
B.	ADOPTED IN COMMISSIONERS’ WEEKLY MEETING January 15, 2025.....	15

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

1. This matter comes before the Commission for consideration of the Application (“Application”) filed on September 5, 2024, by Public Service Company of Colorado (“Public Service” or the “Company”) requesting the Commission issue an order approving the Company’s creation of a regulatory asset to track and defer above or below what is included in base rates for excess liability insurance premiums.

2. By this Decision, the Commission grants the Application with modifications, as discussed below.

**B. Background**

3. Public Service filed an application for approval of a 2025-2027 Wildfire Mitigation Plan (“WMP”) on June 27, 2024, in Proceeding No. 24A-0296E. While its direct testimony supporting the approval of the WMP stated that excess liability insurance premiums were expected to increase due to increasing wildfire risk, Public Service deferred information about the specifics to this separate Application.<sup>1</sup>

4. On September 5, 2024, Public Service filed the Application pursuant to Commission Rule 1303 of the Commission’s Rules of Practice and Procedure, 4 *Code Colorado Regulation* (“CCR”) 723-1, Rule 3002 of the Commission’s Rules Regulating Electric Utilities, and 4 CCR 723-3. The Company’s Application requested the deferral accounting order to become effective on October 18, 2024, the day upon which the Company’s renewed insurance policy takes effect and asked the Commission to approve the establishment of the regulatory asset before the

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<sup>1</sup> Hr. Ex. 300, Henry-Sermos Answer, p. 11:13-12:15.

end of the year. To that end, concurrently with the Application, Public Service filed a Motion for Expedited Treatment (“Expedited Procedures Motion”).

5. On September 12, 2024, the Commission issued Decision No. C24-0661-I establishing a shortened notice and intervention period and setting response time to the Expedited Procedures Motion.

6. By Decision No. C24-0719-I, issued on October 4, 2024, the Commission deemed the Application complete, granted the Expedited Procedures Motion, established an expedited procedural schedule, and scheduled an evidentiary hearing *en banc* to be held on November 21, 2024. The Commission also acknowledged the notices of intervention of right filed by Trial Staff of the Commission (“Staff”) and the Colorado Office of the Utility Consumer Advocate (“UCA”), and granted the request for permissive intervention filed by Colorado Energy Consumers (“CEC”).

7. On October 18, 2024, Staff, UCA, and CEC each filed answer testimony.

8. On November 1, 2024, Public Service filed rebuttal testimony.

9. On November 21, 2024, the Commission held the scheduled *en banc* evidentiary hearing.

10. At the hearing, the Commission admitted the following exhibits by motion or by taking administrative notice: Hearing Exhibits 109, 304, 305, 306, 401, 500, 501, 502, 503, 504, 505, 506, and 600.

11. During the hearing, the Commission requested Public Service submit a Hearing Exhibit demonstrating the direct allocations of premiums associated with wildfire claim and load data. Public Service submitted the information, marked as Hearing Exhibit 114, and the

Commission admitted Hearing Exhibit 114 into the evidentiary record on December 6, 2024, by Decision No. C24-0898-I.

12. On December 11, 2024, all parties filed their Statements of Position (“SOPs”).

13. On January 15, 2025, the Commission deliberated on the merits of the Company’s Application at the Commissioners’ Weekly Meeting, resulting in this Decision.

### **C. Legal Standard**

14. As the party seeking Commission approval or authorization, Public Service bears the burden of proof with respect to the relief sought.<sup>2</sup> Intervenors bear the burden of proof with regard to each of their proposals advanced in Answer Testimony. The burden of proof is by a preponderance of the evidence.<sup>3</sup> The evidence must be “substantial evidence,” which is defined as “such relevant evidence as a reasonable person’s mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.”<sup>4</sup> The Commission has an independent duty to determine matters that are within the public interest.<sup>5</sup> As the parties raise in their testimony and SOPs, in determining whether to grant an application for deferred accounting order, the Commission typically considers several factors including whether the costs the Company seeks to defer are volatile, unforeseeable, and outside the Company’s control.<sup>6</sup>

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<sup>2</sup> See Rule 1500, 4 CCR 723-1 (burden of proof and initial burden of going forward shall be on the party that is the proponent of a decision) and § 24-4-105(7), C.R.S. (proponent of order has burden of proof).

<sup>3</sup> See § 13-25-127(1), C.R.S. (burden of proof in any civil action shall be by a preponderance of the evidence)

<sup>4</sup> *City of Boulder v. Pub. Utils. Comm’n*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Pub. Utils. Comm’n*, 949 P.2d 577, 585 (Colo. 1997)).

<sup>5</sup> *Caldwell v. Pub. Utils. Comm’n*, 692 P.2d 1085, 1089 (Colo. 1984).

<sup>6</sup> See, e.g., Hr. Ex. 103, Berman Rebuttal Testimony, p. 17:6-8; CEC SOP at p. 6.

**D. Summary of Public Service's Application**

15. In its Application, Public Service requests the Commission approve its request, as of an effective date of October 18, 2024, to track, record as a regulatory asset, and defer the difference between the costs associated with changes in premiums for excess liability insurance and amounts included in base rates.

16. The Company states that excess liability insurance, procured on its behalf from Xcel Energy, Public Service's parent holding company, is

intended to insure the Company against liability to third parties. Examples of claims paid under this policy include property damage, bodily injury, or death to members of the public caused by the Company's employees or the Company's equipment or facilities. This includes liability from power line contact, gas explosion, or wildfire.<sup>7</sup>

17. The Company states it maintains excess liability insurance for numerous reasons, including statutory and financing requirements, and that maintaining liability coverage is necessary and prudent to help manage the risk of catastrophic claims. It explains that its excess liability program includes multiple layers and underwriters, including mutual insurers, commercial insurers, and use of an insurance captive for Xcel Energy and its subsidiaries.

18. The Company states the insurance policies secured by Xcel Energy are for one-year terms that are renegotiated annually after fresh risk evaluation. The current policy renewal process started in January 2024 and the new policy was anticipated to take effect as of October 18, 2024. Public Service states that Xcel Energy manages its premium costs through a variety of actions, including using specialized brokers; meeting directly with underwriters on its risk profile; leveraging its captive provider; and negotiating extensively. Overall insurance costs are allocated from Xcel Energy to Public Service directly, based on factors like individual operating company

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<sup>7</sup> Hr. Ex. 102, Miller Direct Testimony, at p. 8:3-7.

risk, historical claims, and in accordance with the Cost Assignment and Allocation Manual (“CAAM”). Public Service’s shares of premiums are then recovered through rates as operations and maintenance (“O&M”) expenses.

19. As a primary rationale for its request to track and defer costs, Public Service cites exceptionally high projected increases in costs to maintain excess liability insurance. Public Service asserts that while its Company-wide (electric and gas) share of premiums was \$12.8 million from October 2023 to October 2024, its share is projected to reach \$49 million for the year beginning October 2024.<sup>8</sup> This is in contrast to shares of approximately \$4.9 million electric and \$3.1 million gas included in recent rate proceedings.<sup>9</sup>

20. Public Service states that the primary drivers of risk are increased wildfire risk and associated wildfire claims, which have resulted in insurance markets reducing their capacity and increasing premium costs. It argues that wildfire risk adds uncertainty to the third-party liability insurance market and that it is dependent on the evolution of the industry as a whole, including the mitigation activities of other utilities. Between the limited information available from insurance marketers and the material increase in costs, Public Service argues that the requested accounting order is necessary because costs are both volatile and uncontrollable.

21. Public Service argues the Commission has granted requests for ongoing deferral and tracking for similar costs, including property taxes, gas damage prevention, pension expenses, and PUC operating costs through the Fixed Utilities Fee.<sup>10</sup> The Commission has also granted one-time requests related to the Advanced Grid Infrastructure and Security Initiative, environmental remediation, coal combustion, and bad debt related to the COVID-19 pandemic.<sup>11</sup>

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<sup>8</sup> Hr. Ex. 102, Miller Direct Testimony, p. 13:3-4, 15:19 – 17:11.

<sup>9</sup> Hr. Ex. 101, Berman Direct Testimony, p. 9:3-6 (citing to Proceeding Nos. 22AL-0530E and 24AL-0049G).

<sup>10</sup> *Id.* at pp. 14:21-16:15.

<sup>11</sup> *Id.* at pp. 17:11 – 18:3.

The Company also states that utility regulators in other jurisdictions have granted similar treatment, including in California, Oregon, and Idaho, with Washington also pending consideration.<sup>12</sup> Public Service further claims that in the absence of excess liability insurance, claims against Public Service could negatively impact its cash flow and credit metrics, which would raise its financing costs and the ultimate costs of providing utility service to customers. The Company also maintains that excess liability insurance makes rates steadier and more predictable.

**E. Parties' Positions**

**1. Public Service**

22. Public Service recommends the Commission approve its request, modified in its rebuttal testimony, for an October 26, 2024, effective date for the excess liability insurance premiums.<sup>13</sup> It argues that excess liability insurance is necessary and appropriate for utility operations. Ultimately, Public Service continues to assert in its SOP that approval of the deferred accounting order is necessary because of current and anticipated future volatility of insurance prices. Public Service represents that its share of the excess liability insurance will be approximately \$49 million for October 2024 to 2025, an increase of \$36 million or 284 percent, which significantly exceeds prior year-to-year increases. It argues that the level of increase was not reasonably foreseeable even at the time of filing its WMP application and has no historical basis. Public Service adds that Xcel Energy engaged in significant negotiations to reduce premiums, including by delaying the effective date for policy renewal, but that insurance costs are developed regionally and are out of its control.

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<sup>12</sup> *Id.* at pp. 18:7 – 19:5.

<sup>13</sup> Hr. Ex. 103, Berman Rebuttal, at p. 5:18-21.

23. Public Service also reiterates its position that intervenor concerns regarding prudence, allocation of costs across Xcel Energy companies, potential impacts to premiums due to theoretical future liability claims, return on equity impacts, and allocation as between ratepayers and shareholders, are misplaced in this Proceeding, because these issues could be addressed in the Company's next rate case filing.

24. However, in response to the oral testimony offered during the evidentiary hearing, Public Service proposes three new modifications to its request in its SOP. First, it agrees that the ability to track and defer excess liability insurance premium costs will need to be addressed in each subsequent rate case if it is to continue. Second, it commits not to propose to recover deferred excess insurance premium costs in any proceeding other than a base rate case or securitization proceeding, unless agreed-to by all other parties to this Proceeding. Third, it commits to cap the deferral at the amount of the insurance renewal period cost for the period October 2024 through October 2024, even if excess liability premiums continue to escalate.

25. Consistent with its rebuttal testimony,<sup>14</sup> Public Service also proposes to file a report by June 2, 2025, that addresses how it is optimizing the insurance program, including the overall tower and use of the captive insurer. Within its SOP, it also states general support for continuing to explore other options, such as self-funded insurance or insurance pools, over the longer term, which may involve coordination with other utilities and the General Assembly.

## **2. Staff**

26. Staff recommends the Commission deny the Company's request for a regulatory account to address the increased excess liability insurance premiums, or, in the alternative, it recommends the Commission limit the scope and timing of the request. Staff argues that the

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<sup>14</sup> Hr. Ex. 104, Miller Rebuttal Testimony, p. 12:2-10.



Company has failed to demonstrate that increased excess liability insurance premiums warrant an exception from the traditional principle that they are O&M expenses considered in a general rate case. While acknowledging that Public Service does not have access to proprietary models from insurance companies, Staff argues that it failed to show that the increased costs were unforeseeable or beyond its control because general wildfire risk is increasing; Xcel Energy is involved in litigation in multiple states regarding wildfires allegedly sparked by its equipment which it acknowledged could affect its premiums; its original wildfire mitigation plan was filed in 2020<sup>15</sup> and is therefore not new; and it described many internal processes it undertakes to maintain appropriate insurance levels and to negotiate with insurance companies. Staff also raises concerns that the Company is not able to account for which drivers of the premium increase are attributable to its own actions versus to general market trends, which is troubling if cost increases are becoming the new normal.

27. In the alternative, if the Commission chooses to grant the Company's request, Staff requests that it adopt certain limitations in time and scope. First, Staff recommends that an accounting order be limited to either one year or when the Company files its next rate case, whichever comes first. Staff adds that the Company should be precluded from seeking recovery in any standalone proceeding. Staff also recommends the Commission require Public Service to continue engaging with insurers and brokers, and report on its efforts to stakeholders to enable them to understand, for example, the causes of cost increases.<sup>16</sup>

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<sup>15</sup> Proceeding No. 20A-0300E.

<sup>16</sup> Staff's SOP, filed December 11, 2024, pp. 10-11.

### 3. UCA

28. UCA recommends the Commission deny the Company's request for an accounting order to address the excess liability insurance premiums and instead direct the Company to address such costs in rate cases, consistent with current practices. UCA contends that liability insurance costs are a type of O&M expense that are typically considered in general rate cases, thus giving utilities a strong incentive to control costs between cases. UCA also argues that the circumstances surrounding liability insurance are not extraordinary and that other Western states have been dealing with wildfire risk for years. Additionally, UCA raises concerns that excess liability insurance reduces risk to shareholders, and therefore justifies a lower return on equity, which could be considered in a rate case. Certain other cost allocation and rate issues are also raised by UCA as being necessary to decide prior to granting the request for deferral to avoid creating an expectation of cost recovery, including the allocation of costs between ratepayers and shareholders, the role of the WMP in reducing risk, and the levels of insurance coverage that are appropriate, as well as whether they should come from self-funding or other avenues. UCA also argues that neither the in-state tracker cases relied on by the Company, nor the out-of-state wildfire cases raised at hearing are applicable here.<sup>17</sup>

### 4. CEC

29. CEC recommends the Commission deny the Company's request to track, record as a regulatory asset, and defer the costs of excess liability insurance premiums. CEC argues that deferred accounting orders should be granted sparingly, and that Public Service has not satisfied the criteria previously used by the Commission justify approval of an accounting order, citing a

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<sup>17</sup> UCA's SOP, filed December 11, 2024, at pp. 10-12.

Commission preference for holistic consideration in rate increases.<sup>18</sup> First, CEC disputes that steadily increasing insurance costs are volatile or unforeseeable, and states that out-of-state cases are part of the reason why Public Service should have been on notice as to premium increases attributable to wildfire risk. Second, CEC raises the inherent tension between the Company stating that it continues to manage insurance costs through negotiations, while also stating that it has no control over premiums, arguing that if the Company is granted a tracker, it will have even less incentive to manage premium costs going forward.

30. Next, CEC disputes that the examples of other accounting orders granted by the Commission are relevant to the request being made here. It indicates that these accounting orders were either granted as part of rate cases or other, larger proceedings, or were based on unusual actions by outside governmental entities and were uncontested.<sup>19</sup> CEC also disagrees that the examples of out-of-state deferral account proceedings are applicable to Public Service's request, as those commissions considered the deferral in a rate case or at minimum conditioned its approval with time or cost limitations.<sup>20</sup>

31. While CEC recommends rejecting the Application, should the Commission authorize the Company to track and defer these expenses, CEC asks the Commission to establish certain conditions that would limit the recovery. CEC recommends that any deferral be limited to no more than actual costs in amount, and no later than the renewal for next year's premium or the next general rate case, in duration. CEC also recommends that the Commission incorporate language to limit ratepayer recovery should there be any future liability related to the 2021 Marshall Fire.<sup>21</sup>

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<sup>18</sup> CEC's SOP, filed December 11, 2024, p. 4.

<sup>19</sup> *Id.* at pp. 8-9.

<sup>20</sup> *Id.* at pp. 9-11.

<sup>21</sup> *Id.* at p. 13-14.

**F. Findings and Conclusions**

32. That wildfire risk is escalating across the West is painfully clear. Liability insurance premiums are increasing at extraordinary rates, and the Company's share of the October 2024 premium significantly exceeds the amounts in its more recent rate cases or even its projections as of the time it filed the WMP application. We also agree with Public Service that the need for financial stability is critical given the importance of proactively addressing emerging risks.

33. Yet we find ourselves compelled by the points made by the other parties who argue that the Company has prematurely brought forward a request that primarily provides accounting benefits but leaves data gaps and fails to address the full context of the costs and risks. Notably, we agree with points raised by CEC and Staff that costs are only increasing, rather than volatile. Moreover, the Company has made only conclusory statements regarding the connections, or lack thereof, between its own efforts at risk mitigation through the 2025-2027 WMP and how premiums will be assessed and allocated to Colorado ratepayers—and, out of all the components of the 2025-2027 WMP, it particularly emphasizes Public Safety Power Shut-offs as being important to insurers.<sup>22</sup> Questions were also raised at hearing about whether the quality of coverage is keeping pace with the premium increases. We are concerned that if the Application were granted as-is, the Company would lack sufficient incentive to manage its premium costs going forward, to explore alternatives to the deferred accounting proposal in the future (such as pools or self-funding), or to promote efforts for the insurance market to make connections between risk mitigation and premium costs.

34. Fortunately, multiple parties have converged on a series of guardrails which appropriately balance the Company's request with the other parties' concerns. Staff, CEC, and the

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<sup>22</sup> Public Service SOP at p. 15.

Company all agree that an appropriate limitation would be to allow the Company to track and defer actual costs associated with excess liability insurance premiums above what is in base rates only until the end of the current annual premium in October 2025, or the filing of the next rate case, whichever comes first. They further agree that future requests for cost recovery should be addressed in the Company's next rate case. With these guardrails, our concerns associated with granting the Application as-is are mitigated. Therefore, we will grant the Application with modifications, including these limitations agreed-to by Staff, CEC, and the Company.

35. Additionally, parties have emphasized that insurance costs are most commonly treated as O&M expenses. Consistent with this practice, and as agreed-to in its testimony, the Company may not earn a return on the same costs when deferred as a regulatory asset.<sup>23</sup>

36. We also direct the Company to file by June 2, 2025, a report that addresses the actions it is taking to assist in stabilizing or lowering premium costs, consistent with its rebuttal testimony.<sup>24</sup> The Company should continue to engage stakeholders, and particularly Staff, to better understand possible opportunities and problems as the insurance market evolves.

37. We emphasize that, while we are granting the Application with modifications that limit the scope of the accounting order, this does not create a presumption of prudence for purposes of cost recovery. This is consistent with our current practices. Parties have raised—and the Company has acknowledged—the many practical and policy issues that might be considered in a future rate case. These issues include, but are not limited to, the appropriate allocation of costs as between shareholders and ratepayers given the potential that liability insurance reduces shareholder risk exposure, and the impact of claims history on the premiums allocated to

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<sup>23</sup> Hr. Ex. 101, Berman Direct Testimony, p. 12:5-6.

<sup>24</sup> Hr. Ex. 104, Miller Rebuttal Testimony, p. 11:17-12:10.

Public Service. We also anticipate that the ongoing litigation of the 2025-2027 WMP may present other information that could be considered in this future venue.

38. This decision to grant an accounting order for a limited time and with a cost cap set at the Company's actual share of 2024 premiums should be viewed as unique and not precedential, should the Company request that liability insurance costs continue to be deferred in the future. Given the evidence that has now been presented in this Proceeding regarding experience in other Western states, and the procedural history of wildfire mitigation issues coming before the Commission, we anticipate that the bar to demonstrate that liability insurance premium cost increases going forward are volatile or unforeseeable will be extremely high.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Application for Approval of Deferred Accounting Treatment for Costs Associated with Changes in Premiums for Excess Liability Insurance filed by Public Service Company of Colorado on September 5, 2024, is granted, with modifications, consistent with the discussion above.

2. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

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

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
January 15, 2025.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

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Commissioners