

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0327E

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

**RECOMMEDED DECISION
APPROVING SETTLEMENT AGREEMENT
WITH MODIFICATION AND
GRANTING MODIFIED APPLICATION**

Issued Date: March, 14, 2025

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I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY¹

A. Statement and Summary

1. This Decision approves the Non-Unanimous Comprehensive Settlement Agreement filed on December 6, 2024 (“Settlement Agreement” or “Agreement”) with a modification requiring additional reporting; grants the Motion to Approve Non-Unanimous Comprehensive Settlement Agreement filed December 6, 2024 (“Motion”) in part; grants Public Service Company of Colorado’s (“Public Service” or “the Company”) above-captioned

¹ Headings in this Decision are for ease of reference only. The public version of this Decision redacts highly confidential information and the highly confidential version highlights the highly confidential information in blue.

Application (“Application”) as modified by the Agreement and this Decision; and closes this Proceeding.²

B. Procedural History³

2. On August 1, 2024, Public Service filed the Application with supporting direct testimony and attachments thereto (“direct-case”).

3. During its weekly meeting held September 11, 2024, the Commission deemed the Application complete and referred this matter by minute entry to an administrative law judge (“ALJ”) for disposition.

4. In addition to Public Service, the Office of the Utility Consumer Advocate (“UCA”) and Public Utilities Commission Trial Staff (“Staff”) are parties to this Proceeding.⁴

5. With input from the parties, on September 23, 2024, the ALJ scheduled a fully remote evidentiary hearing for January 9 and 10, 2025, and established procedures and deadlines to facilitate that hearing.⁵ The parties made numerous filings to comply with the established procedural deadlines, including filing answer and rebuttal testimonies.

6. On December 6, 2024, Public Service filed the Settlement Agreement and the accompanying Motion seeking its approval.

7. On December 18, 2024, UCA filed a “Motion Authorizing the Filing of Surrebuttal Testimony . . .” (“Motion to File Surrebuttal”) and public and highly confidential versions of the same (Hearing Exhibit 301 and 301HC), among other filings.

² In reaching this Decision, the Administrative Law Judge has considered and weighed all aspects of Public Service’s Application and the Settlement Agreement, including elements that are not disputed or discussed, and all evidence and arguments presented, including those discussed briefly or not at all. Any requests for relief not specifically granted have been considered and are denied.

³ Only the procedural history necessary to understand this Decision is included.

⁴ Decision No. R24-0683-I at 13 (issued September 23, 2024).

⁵ *Id.*

8. On December 20, 2024, UCA filed a “Motion to Compel Disclosures . . .” (“First Motion to Compel”) with attachments.

9. On January 2, 2025, Public Service filed a public and highly confidential “Response in Opposition . . . to the Office of the Utility Consumer Advocate’s Motion to Compel and Motion for Leave to File Surrebuttal Testimony” with attachments (“Combined Response”).

10. On January 6, 2025, the ALJ informed the parties and counsel via email that the Motion to File Surrebuttal is granted and the First Motion to Compel is denied.⁶ The ALJ explained that a written decision will outline these rulings, and that during the evidentiary hearing, Public Service and Staff will be given the opportunity to present evidence responding to UCA’s Surrebuttal Testimony.⁷

11. On January 6, 2025, after the ALJ informed the parties of her rulings on the referenced Motions, UCA filed a “Motion to Compel Disclosures to the Fifth Set of Discovery Requests . . .” (“Second Motion to Compel”) with an attachment.

12. On January 7, 2025, Public Service filed a “Response in Opposition . . . to the Second Motion to Compel of the Office of the Utility Consumer Advocate.”

13. The ALJ held the evidentiary hearing as noticed on January 9 and 10, 2025. All parties appeared. Prior to starting the evidentiary portion of the hearing, the ALJ reiterated her rulings on the above-referenced Motions and denied UCA’s Second Motion to Compel. Public Service and Staff were given the opportunity to present evidence responding to UCA’s Surrebuttal Testimony during the hearing. Public Service took advantage of that opportunity.

⁶ Email to Parties Regarding Pending Motions filed January 6, 2025 (“1/6/25 Email to Parties”). See Decision No. R25-0051-I at 31-32 (issued January 24, 2025).

⁷ 1/6/25 Email to Parties. See Decision No. R25-0051 at 10-11.

14. During the hearing, the most recent versions of the following exhibits and associated attachments (including confidential, highly confidential, and executable exhibits and attachments) were admitted into evidence: Hearing Exhibits 100 to 101; Hearing Exhibit 102, Rev. 2 (“Hearing Exhibit 102”); Hearing Exhibit 103, Rev. 1 (“Hearing Exhibit 103”); Hearing Exhibits 104 to 112; Hearing Exhibit 300, Rev. 1 (“Hearing Exhibit 300”), Hearing Exhibit 300HC, Rev. 1 (“Hearing Exhibit 300HC”); Hearing Exhibit 301 and 301HC; Hearing Exhibits 303 to 304; Hearing Exhibit 400; and Hearing Exhibit 500.⁸

15. At the end of the hearing on January 10, 2025, the ALJ encouraged the parties to address in their Statements of Position (“SOPs”) the relevant burdens of proof and their positions on whether certain additional reporting is appropriate and feasible, and if so, to describe the contours of such reporting.⁹

16. On January 24, 2025, the ALJ issued Decision No. R25-0051-I, memorializing and explaining the rulings on the Motion to File Surrebuttal, the First and Second Motions to Compel (collectively, “Motions to Compel”), and other unopposed Motions.¹⁰

17. Also on January 24, 2025, the UCA filed public and highly confidential versions of its “Post Hearing Statement of Position . . .” (“UCA’s SOP” or “UCA’s HC SOP”).

⁸ Hearing Exhibit 500 is a pdf list of pre-filed exhibits that the parties indicated they may offer into evidence during the hearing. It lists information necessary to identify the specific document being offered (including exhibit number, file date, and filing party) as it appears in the administrative record. During the hearing, most exhibits were presented, offered, and admitted into evidence by administrative notice using the Excel version of Hearing Exhibit 500 with live links to each of the parties’ pre-filed exhibits, as they appear in the administrative record. This means that except as noted, the pre-filed exhibits and attachments identified in Hearing Exhibit 500 (as they appear in the administrative record) were taken into evidence in lieu of receiving an identical copy during the hearing. The following exhibits were admitted and received electronically into the record via box.com (and not via administrative notice): Hearing Exhibit 102, Executable Attachment MGS-1HC Rev. 1 (“Hearing Exhibit 102, Executable Attachment MGS-1HC”); Hearing Exhibit 301, Attachment CN-6, Rev. 1 (“Hearing Exhibit 301, Attachment CN-6”); Hearing Exhibit 301, Attachment CN-6HC, Rev. 1 (“Hearing Exhibit 301, Attachment CN-6HC”); and Hearing Exhibits 303-304. Administrative support staff added these exhibits to the record on January 13, 2025. Hearing Exhibit 113 was also added the record at the same time but was not admitted into evidence.

⁹ January 10, 2025 Hearing Transcript (“1/10/25 Tr.”), 34: 17-25—35: 1-6. There were no highly confidential sessions during the January 10, 2025 hearing; as a result, there is only one transcript for that date.

¹⁰ Decision No. R25-0051-I.

18. Likewise, on January 24, 2025, Public Service filed public and highly confidential versions of a “Joint Statement of Position . . .” (“Joint SOP” or “HC Joint SOP”) on behalf of itself and Staff.¹¹

II. RELEVANT LAW

19. The Commission has extensive and broad constitutional and statutory authority to regulate public utility rates, services, and facilities.¹² Indeed, the Commission is charged with ensuring that utilities provide safe and reliable service to customers at just and reasonable rates.¹³ The Colorado Supreme Court recently held that rates are just and reasonable when they protect customers’ right to pay a rate that accurately reflects the cost of service rendered; distribute costs among customers in a just and reasonable manner; and protects the utility’s and its investors’ right to earn a return that is reasonably sufficient to maintain the utility’s financial integrity.¹⁴ Setting rates that cover the utility’s legitimate cost of service is intended to maintain public utilities’ continued operational viability for the purpose of serving the public.¹⁵ This encompasses the concept that failing to set rates that capture the cost of service may threaten the utility’s ability to serve the public.¹⁶

20. When exercising any power granted to it, the Commission must give the public interest first and paramount consideration.¹⁷

¹¹ The parties did not consecutively page number each page of their respective SOPs, making it difficult to electronically navigate to a cited page number. To make it easier for the reader to electronically navigate to the correct page number, this Decision cites to the consecutive page numbers in the parties’ SOPs, and not to the page numbers that appear on the SOPs themselves.

¹² *Pub. Serv. Co. of Colo. v. Pub. Util. Comm’n*, 350 P.2d 543, 549 (Colo. 1960), *cert. denied*, 364 U.S. 820 (1960). See Colo. Const. art. XXV; §§ 40-3-101, 40-3-102, 40-3-111, 40-6-111, C.R.S.

¹³ §§ 40-3-101(1) and (2), 40-3-102, C.R.S. See §§ 40-3-111, and 40-6-111, C.R.S.

¹⁴ *Holcim v. Co. Pub. Util. Comm’n*, 562 P.3d 55, 60 (Colo. 2025). See *CF&I Steel, L.P., v. Pub. Utils. Comm’n*, 949 P.2d 577, 584 (Colo. 1997).

¹⁵ *CF&I Steel, L.P.*, 949 P.2d at 584.

¹⁶ See *id.*

¹⁷ *Pub. Serv. Co. of Colo.*, 350 P.2d at 549.

21. Although neither Commission rules nor Colorado statutes define prudence for purposes of cost recovery in cases like this, the Commission has repeatedly found that the prudence review standard for cost recovery in gas commodity adjustment (“GCA”) proceedings applies to prudence review proceedings like this.¹⁸ As such, this Decision applies that standard, found in Rule 4608(c) of the Commission’s Rules Regulating Gas Utilities. Rule 4608(c) states:

For purposes of GCA recovery, the standard of review to be used in assessing the utility’s action (or lack of action) in a specific gas purchase year is: whether the action (or lack of action) of a utility was reasonable in light of the information known, or which should have been known, at the time of the action (or lack of action). The Commission may consider, as appropriate, whether the utility employed carefulness, precaution, attentiveness, and good judgment.¹⁹

22. Prudence for cost recovery is not determined based on the perfection of 20/20 hindsight but must be assessed by evaluating whether the utility’s action or inaction was reasonable in light of information known or which should have been known at the time.²⁰ But, a hindsight review is appropriate to determine how to address similar issues moving forward.²¹

23. As the initiating party and the party seeking relief through an application, the utility bears the burden of proof and the “initial burden of going forward.”²² The Commission has described the burden of going forward as “the burden of production,” which requires the party to

¹⁸ See e.g., Decision Nos. R22-0279 at ¶ 15 (issued May 11, 2022), C22-0413 at ¶¶ 11, 27, and 30 (issued July 14, 2022), and C22-0512 at ¶ 24 (issued September 1, 2022) all in Proceeding No. 21A-0192EG (“Decision No. R22-0279,” “Decision No. C22-0413” and “Decision No. C22-0512”); Decision No. R20-0144 at ¶ 24-26 (issued March 9, 2020) in Proceeding No. 19A-0425E (“Decision No. R20-0144”); Decision No. R14-0496 at ¶ 47-49 (issued May 9, 2014) in Proceeding No. 13A-0869E (“Decision No. R14-0496”). See generally Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (“CCR”) 723-3.

¹⁹ Rule 4608(c), 4 CCR 723-4.

²⁰ See Rule 4608(c). See e.g., Decision Nos. R22-0279 at ¶ 15; C22-0413 at ¶¶ 11, 27, 30; C22-0512 at ¶ 24 Decision No. R10-0546-I at ¶ 17 (issued June 1, 2010) in Proceeding No. 10A-124E (“Decision No. R10-0546-I”). See also, Decision No. R11-0995 at ¶ 68 (issued September 15, 2011) in Proceeding No. 11A-303E (“R11-0995”); Decision No. C09-0596 at ¶ 43 (issued June 9, 2009) in Proceeding No. 08A-095G (“Decision No. C09-0596”).

²¹ See e.g., Decision Nos. R22-0279 at ¶¶ 16 and C09-0596 at ¶ 43.

²² Rule 1500 of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1. See also § 24-4-105(7), C.R.S., (proponent of an order has burden of proof). See e.g., Decision No. C22-0272 at ¶ 29 (issued May 5, 2022) in Proceeding No. 21A-0166E (“Decision No. C22-272”); Decision No. R14-0496, ¶ 55.

produce evidence supporting their requested relief.²³ As explained above, in a cost recovery proceeding such as this, the primary question is whether the utility prudently incurred the expenses it seeks to recover. As such, the utility's burden of proof in a cost recovery proceeding includes making a *prima facie* case establishing that the expenses it seeks to recover were prudently incurred.²⁴ *Prima facie* evidence is evidence that, unless rebutted, is sufficient to establish a fact.²⁵ The utility maintains its burden of proof throughout the entire Proceeding.²⁶ The utility typically meets its burden through written testimony and exhibits submitted with its application or other initiating filing seeking relief.²⁷ This does not mean that a utility meets that burden merely by filing direct testimony and exhibits. Rather, it means that the burden is typically met based on the substantive evidence in the utility's direct testimony and exhibits (*i.e.*, its direct-case evidence). It also means that the Commission could find that the utility's direct-case evidence fails to meet this burden, even when the utility's cost recovery request is unopposed. This is consistent with the Commission's role to ensure that rates are just and reasonable and to make the public interest first and paramount.²⁸

24. Parties may challenge the utility's requested relief and *prima facie* showing by presenting evidence.²⁹ Though in different contexts, the Commission has repeatedly described this as shifting the burden of going forward to interveners, who then have the burden to provide

²³ Decision No. C22-0272 at ¶ 29.

²⁴ See *e.g.*, Decision No. R22-0279 at ¶¶ 15-16; C22-0413 at ¶¶ 11, 27 and 30. See also, Rule 4608(c) and (e), 4 CCR 723-4; Decision No. R14-0496 at ¶¶ 54-56.

²⁵ *Stamp v. Vail Corp.*, 172 P.3d 437, 449 (Colo. 2007); *In re Piercen's Estate*, 195 P.2d 725, 726 (Colo. 1948), quoting *La Fitte v. City of Ft. Collins*, 42 Colo. 293, 298 (Colo. 1908).

²⁶ See *e.g.*, Decision No. R14-0496 at ¶ 56. See also *W. Distrib. Co. v. Diodosio*, 841 P.2d 1053, 1057-1058 (Colo. 1992); *Judkins v. Carpenter*, 537 P.2d 737, 98 (Colo. 1975).

²⁷ See *e.g.*, Decision No. R22-0279 at ¶ 16. See also, Decision Nos. R20-0144 at ¶ 29; 14-0496 at ¶ 56.

²⁸ § 40-3-101(1), C.R.S.; *Pub. Serv. Co. of Colo.*, 350 P.2d at 549.

²⁹ See *e.g.*, Decision No. C22-0272 at ¶ 29; Decision No. R23-0464 at ¶ 66 (issued July 18, 2023) in Proceeding No. 22AL-0483E ("Decision No. R23-0464"); Decision No. C11-0124, ¶ 10 (issued February 3, 2011) in Proceeding No. 10AL-963G ("C11-0124").

evidence rebutting proponent's evidence or supporting interveners' arguments or requested relief.³⁰ Indeed, the Commission has noted that these burdens may shift back and forth between the parties throughout a proceeding.³¹ In the context of a prudence review like this, parties contesting prudence may challenge the utility's evidence by making a showing identifying specific actions and associated expenditures that were imprudent.³² This showing is not met through blanket objections.³³ If the party contesting prudence makes a sufficient showing to bring the reasonableness of a utility's actions (or inaction) into question, the utility must show that the questioned action or inaction was prudent (*i.e.*, utility must go forward with evidence that it acted prudently).³⁴

25. Parties must meet their respective burdens of proof by a preponderance of the evidence, which requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence.³⁵ The preponderance of the evidence standard requires substantial evidence, which is such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion.³⁶ A party has met this burden when the evidence, on the whole, tips in favor of that party.³⁷

26. The Commission encourages settlement of contested proceedings.³⁸

³⁰ See *e.g.*, Decision No. C22-0272 at ¶ 29; Decision Nos. C25-0050 at ¶ 11 (issued January 23, 2025) and C24-0778 at ¶ 22 (issued October 25, 2024), both in Proceeding No. 24AL-0049G; Decision Nos. R23-0464 at ¶ 66; C11-0124, ¶ 10. See also, Decision No. C25-0055 at ¶ 14 (issued January 24, 2025) in Proceeding No. 24A-0380EG.

³¹ See *e.g.*, Decision No. C22-0272 at ¶ 30.

³² See *e.g.*, Decision Nos. R22-0279 at ¶ 16; R20-0144 at ¶ 29; R14-0496 at ¶ 56. See generally, Decision Nos. C22-0413 and C22-0512 (not disturbing burdens outlined Decision No. R22-0279, ¶ 16).

³³ See *e.g.*, Decision No. R20-0144, ¶ 29. See also Decision No. R22-0279.

³⁴ See *e.g.*, Decision Nos. R22-0279 at ¶ 16; R14-0496 at ¶ 56. See generally, Decision Nos. C22-0413 and C22-0512 (not disturbing burdens outlined Decision No. R22-0279, ¶ 16).

³⁵ *Swain v. Colo. Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). See also §§ 24-4-105(7) and 13-25-127(1) C.R.S.

³⁶ *City of Boulder v. Pub. Utilis. Comm'n.*, 996 P.2d 1270, 1278 (Colo. 2000), quoting *CF&I Steel, L.P.*, 949 P.2d at 585.

³⁷ *Schocke v. Dep't of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

³⁸ Rule 1408(a), 4 CCR 723-1.

III. FINDINGS AND DISCUSSION

A. Company's Direct-Case Evidence

27. Public Service filed the Application as a combined electric commodity adjustment (“ECA”) and purchased capacity cost adjustment (“PCCA”) prudence review because it was required to do so by Decision No. C22-0178 in Proceeding No. 21AL-0317E.³⁹

28. The Company seeks approval to recover ECA and PCCA costs for calendar year 2023, including: (a) approximately \$755 million for fuel, purchased energy, purchased wheeling and other expenses from January 1, 2023 to December 31, 2023 reflected in the ECA;⁴⁰ (b) 2023 gas hedging costs reflected in the ECA;⁴¹ (c) approximately \$84.3 million for 2023 purchased capacity expenses reflected in the PCCA;⁴² and (d) the Company's calculation of the 2023 short-term sales margins used to adjust the 2023 ECA Deferred Account Balance.⁴³ It also requests approval of costs relating to production tax credits (“PTCs”), deferred tax asset (“DTA”), liquidated damages, and cost savings and true-ups (run through the ECA) relating to Company-owned wind projects, per Commission decisions in two wind project proceedings;⁴⁴ and its calculation of the 2023 short-term sales margins credited to the 2023 ECA Deferred Account

³⁹ See Hearing Exhibit 100 at 3.

⁴⁰ See Hearing Exhibit 104, Attachment JRK-1 at 1 (line 29).

⁴¹ See *id.* (line 34).

⁴² See Hearing Exhibit 104, Attachment JRK-8 (line 9). See also, Hearing Exhibit 104, 31: 2-20—32: 1-13; Hearing Exhibit 104, Attachments JRK-6 and 7 (calculations relating to the PCCA).

⁴³ Hearing Exhibit 100 at 1. See Hearing Exhibit 104, 8: 4-21—19: 1-11.

⁴⁴ See Hearing Exhibit 100 at 3, referring to Decision No. C19-0367 (issued April 19, 2019) in Proceeding No. 18A-0905E (Cheyenne Ridge Wind Project) and Decision No. C16-0958 (issued October 20, 2016) in Proceeding No. 16A-0117E (Rush Creek Wind Project); Hearing Exhibit 104, 17: 1-20—19: 1-11; 22: 1-17—25: 1-23; Hearing Exhibit 104, JRK-1 at 1-2 (lines 24 to 26, 39, 56, and 58 to 60).

Balance, with a Commission finding that these margins were determined in a way that conforms to the Company's tariffs and numerous Commission-approved Settlement Agreements.⁴⁵

29. ECA costs subject to a prudence review in this Proceeding include actual energy costs; short-term electric sales margins; capital cost sharing for Company-owned wind projects; PTC and PTC transfer costs; DTA carrying costs; and energy reduction benefit calculations attributable to integrated volt-var optimization investments ("IVVO").⁴⁶

30. The Company provided data and information related to 2023 hourly system operations, must-run designations, renewable energy curtailments and production data, generation unit availability, fuel costs for generation, purchased and interchange power costs, wheeling costs associated with purchased power, IVVO savings, trade margin sharing, capital cost sharing for wind projects, PTC impacts and transfers, PCCA costs and deferred balance, requested true-ups, short-term sales credits, schedules of internal trades, curtailment costs for power purchase agreement ("PPA") generation, participation in the Southwest Power Pool ("SPP") Western Energy Imbalance Services ("WEIS"), and financial hedging costs, among other data.⁴⁷

31. The Company's direct-case evidence is voluminous, encompassing approximately 1,592 pages of materials.⁴⁸ Specifically, Public Service submitted Direct Testimonies and

⁴⁵ Hearing Exhibit 100 at 3-4, referring to settlement agreements approved by Decision No. C06-1379 (issued December 1, 2006) in Proceeding No. 06S-234EG; Decision No. C09-1446 (issued December 24, 2009) in Proceeding No. 09AL-299E; Decision No. C12-0494 (issued May 9, 2012) in Proceeding No. 11AL-947E; Decision No. C15-0292 (issued March 31, 2015) in 14AL-0660E; Decision No. C17-0085 (issued January 30, 2017) in Proceeding No. 16A-0276E; Decision No. C19-0497 (issued June 10, 2019) in Proceeding No. 19D-0193E; Decision No. C04-1208 (issued October 15, 2004) in Proceeding No. 04A-050E.

⁴⁶ Hearing Exhibit 104, 6: 2-11. See Hearing Exhibit 104, Attachments JRK-1 (ECA deferred balance calculations for 2023 by month); JRK-2 (short term sales margins calculations); JRK-3 (Rush Creek capital cost sharing calculations); JRK-4 (IVVO lost revenue calculation); JRK-5 (PTC transfer reporting).

⁴⁷ Hearing Exhibit 101, Attachments MAM-1 to 2; Hearing Exhibit 102, Attachments MGS-1 to MGS-2; Hearing Exhibit 103, Attachments HDH-1 to 3; Hearing Exhibit 104, Attachments JRK-1 to 8; Hearing Exhibit 105, Attachment MAR-1; Hearing Exhibit 106, Attachments JMT-1 to 7.

⁴⁸ See Hearing Exhibits 100-106, and attachments thereto. Of the referenced 1,592 pages of materials, the Company's Direct Testimonies amount to approximately 195 pages.

supporting Attachments for Company witnesses Marci A. McKoane (Hearing Exhibit 101 with 2 attachments); Mark G. Schultz (Hearing Exhibit 102 with 2 attachments); Harlan D. Hanson (Hearing Exhibit 103 with 3 attachments); Jeffrey R. Knighten (Hearing Exhibit 104 with 8 attachments); Michael A. Rein (Hearing Exhibit 105 with 1 attachment); and Joshua M. Tetreault (Hearing Exhibit 106 with 7 attachments).

32. Given the significant volume of the evidence the Company submitted with its direct case, this Decision provides only a high-level summary of that evidence.

33. Ms. McKoane's Direct Testimony provides evidence that explains the Company's system operations and general and specific challenges in 2023; discusses relevant policy and background; describes how the Company's evolving electric system impacts issue here; discusses Company-owned wind projects, including performance and reporting; evaluates Company-owned community solar gardens' ("CSGs") 2023 performance; provides background information and describes the Company's compliance with various ECA and PCCA reporting requirements; explains and discusses the Company's entry into the WEIS market, among other information.⁴⁹ For example, Ms. McKoane explains that Public Service navigated typical system operation challenges in 2023.⁵⁰ Indeed, the Company is in the midst of an unprecedented transition to variable generation and increased complexity at the grid's edge with distributed generation and end-use technologies.⁵¹ This transition has resulted in shakedown periods as new renewable generators get up and running; more curtailments as operators use this reliability tool to manage the system; and

⁴⁹ See Hearing Exhibit 101, at 11-21 (policy, background, and reporting requirements); at 24-27 (electric system evolution and impacts); 28-38 and 47-48 (2023 system operations overview and specific issues); 38-45 (wind projects); 45-46 (CSGs) 48-51 (SPP WEIS entry and impacts). *See also*, Hearing Exhibit 101, Attachments MAM-1 to 2.

⁵⁰ Hearing Exhibit 101, 28: 2-7.

⁵¹ *Id.* at 26: 6-11.

must-run designations to preserve system reliability under certain circumstances.⁵² Policy and market dynamics continue to drive retiring dispatchable resources (coal generation), while replacing those resources with fewer non-dispatchable resources and increasing levels of weather-dependent generation.⁵³ At the same time, the Company anticipates load to continue to grow, resulting in tight capacity and even more complexity in system operations.⁵⁴

34. Ms. McKoane explains that curtailments are an area of active dialogue, both at the Commission and with stakeholders,⁵⁵ and that curtailments are likely to increase over time as the Company continues to transition to higher and higher levels of variable energy resources.⁵⁶ She explains that curtailments are an essential and prudent tool for operating an electric system with non-dispatchable resources (such as wind and solar).⁵⁷

35. The Company submits that it is vital to keep the evolving nature of the system and the increased variability and resulting consequences in mind when evaluating prudence in this Proceeding.⁵⁸ Although it faced an increasingly challenging operational environment with substantial projected load growth on the horizon, Public Service submits that overall, it maintained reliability and resource adequacy, safely served customers, continued to reduce emissions and overcame challenges.⁵⁹

36. Mr. Schultz's Direct Testimony provides evidence that describes the Company's power operations, including impacts arising out of the Company's WEIS participation; discusses 2023 power operations, including actions to meet customer demand, such as dispatching

⁵² *Id.* at 26: 17-22.

⁵³ *See id.* at 36: 8-15.

⁵⁴ *See id.* at 36: 8-15.

⁵⁵ *Id.* at 34: 19-20.

⁵⁶ *See id.* at 35: 6-9.

⁵⁷ *See id.* at 35: 12-18.

⁵⁸ *See id.* 26: 22-23—27: 1-2.

⁵⁹ *See id.* 52: 6-10.

generating resources to ensure electric transmission system reliability and proactively reserving transmission paths to meet peak summer energy needs; explains hourly load and generation data provided with his testimony as Hearing Exhibit 102, Attachment MGS-1HC; and explains curtailments in 2023, among other information.⁶⁰

37. For example, Mr. Schultz explains that the vast majority of curtailments in 2023 were required for system balancing, which is typical for balancing authorities like the Company who have significant amounts of renewable generation.⁶¹ The Company explains that balancing curtailments are one of the tools that utilities use to maintain reliable operations and ensure compliance with the North American Electric Reliability Corporation (“NERC”) standards when renewable output exceeds total system demand during low load periods.⁶² Balancing curtailments includes situations where multiple renewable generation units were collectively subject to regional transmission constraints and when multiple redispatch options existed to relieve a particular balancing need, either regional or system-wide.⁶³ In 2023, less than one percent of curtailments were driven by causes other than balancing.⁶⁴ The Company’s entry into the WEIS in April 2023 impacts the Company’s curtailments because SPP directs the Company to curtail.⁶⁵ SPP-directed curtailments are balancing curtailments, though different from balancing curtailments required to meet NERC standards.⁶⁶ SPP generally manages curtailment similar to the Company, using specific facility cost and transmission interaction location to direct curtailments economically, but

⁶⁰ See Hearing Exhibit 102, at 8-14 (power operations overview and WEIS impacts); 14-19 (2023 power operations); 20-23 (hourly data) 23-26 (curtailments). See also, Hearing Exhibit 102, Attachments MGS-1 to 2.

⁶¹ See *id.* at 23: 18-21.

⁶² *Id.* at 23: 22-23—24: 1.

⁶³ See *id.* at 24: 1-6.

⁶⁴ *Id.* at 24: 6-7.

⁶⁵ *Id.* at 24: 12-15.

⁶⁶ *Id.* at 25: 2-4.

its economic dispatch covers a larger generation portfolio (*i.e.*, across multiple balancing authorities).⁶⁷

38. In total, the Company curtailed 892,967 megawatts in 2023, the lowest curtailment volume since 2020.⁶⁸

39. Through Mr. Hanson's Direct Testimony, Public Service provides evidence concerning system operations and related reporting requirements; generation outages and derates in 2023; plant reliability improvements in 2023 to ensure resource adequacy; Company-owned CSG operations and performance in 2023; Cherokee 4 generating facility 2023 operations; data on 2023 wind projects and performance; PPA reporting; 2023 Brush outages; and reporting data on the Company's owned generation resources and on all large-scale independent power producer-owned wind projects under PPAs, among other information.⁶⁹ Mr. Hanson explains that Company-owned CSGs are relatively new to the Company's system, having been put into commercial operation in mid-2021.⁷⁰ Since these are the first Company-owned CSGs, it faced a learning curve.⁷¹ For example, CSG production estimates in 2023 were consistently higher than actual production.⁷² The Company explains that several factors contributed to this, including that the software used to predict, monitor, and track the actual performance did not account for factors such as weather in modeling the estimated performance.⁷³ As a result, 2023 forecasted CSG production was higher than what they can actually produce on a given day, resulting in an

⁶⁷ *Id.* at 24: 17-19—25:1-2. Because SPP does not report the specific reasons for its curtailment decisions, the Company does not have that information. *See id.* at 25: 5-7.

⁶⁸ *Id.* at 24: 10-11 (Table MGS-D-3).

⁶⁹ *See* Hearing Exhibit 103 at 7-10 (background on outages and derates in 2023); 11- 14 (2023 plant reliability improvements); 15-18 (2023 Cherokee 4 operations); 18-20 (reporting); 20-22 (wind projects); 23-24 (PPA reporting and Brush outages); 25-28 (2023 CSG operations). *See also*, Hearing Exhibit 103, Attachments HDH-1 to 3.

⁷⁰ Hearing Exhibit 103, 25: 8-9.

⁷¹ *Id.* at 25: 10-11.

⁷² *Id.* at 25: 17 (Table HDH-D-1).

⁷³ *Id.* at 26: 3-7.

appearance that CSGs underperformed.⁷⁴ Other issues include certain settings that caused CSGs to trip off when there was a distribution change, which required a technician to be dispatched to reset a transformer each time, thereby delaying CSGs' return to service.⁷⁵

40. Mr. Hanson explained that the Company continues to work through issues and improve its CSGs' performance.⁷⁶ For example, in mid-2023, it completed an advance site configuration to improve the predicted production values for each site to more accurately reflect each CSGs' capabilities and improve diagnostics and monitoring.⁷⁷ Public Service also studied issues relating to the settings mentioned above and performed related modeling to ensure it would maintain necessary safeguards while avoiding CSG nuisance disruptions; updated the relevant settings; and contracted with a local solar company to assist with CSGs' operational and maintenance needs.⁷⁸

41. Through Mr. Knighten's Direct Testimony, Public Service provides evidence that supports and explains the Company's 2023 ECA calculations in Hearing Exhibit 104, Attachment JRK-1; costs included in the 2023 ECA; supplemental reporting and accounting requirements; 2023 PCCA contracts and costs; short-term sales margins and PCCA calculations for calendar year 2023; and how the methodology for those calculations conforms to the Company's tariffs and numerous Commission-approved Settlement Agreements, among other information.⁷⁹

42. Mr. Rein's Direct Testimony provides evidence that describes the Company's transmission operations' role and function; explains 2023 transmission operations' actions as to

⁷⁴ *Id.* at 26: 10-23—27: 1-3.

⁷⁵ *See id.* 26: 8-9.

⁷⁶ *Id.* at 25: 13-16.

⁷⁷ *Id.* at 27: 4-8.

⁷⁸ *Id.* at 27: 4-23—28: 1-13.

⁷⁹ *See* Hearing Exhibit 104 at 8-19 (ECA costs and calculation); 20- 22 (2023 ECA short-term sales margins); 2-26 (2023 wind project costs run through ECA); 26-30 (IVVO costs included in ECA); 31-33 (2023 PCCA contracts and costs). *See also*, Hearing Exhibit 104, Attachments JRK-1 to 8.

specific events or facilities; provides background on must-run designations; and explains how the Company's must-run designations in 2023 were prudent and appropriate to maintain transmission system reliability, among other information.⁸⁰

43. Mr. Tetreault's Direct Testimony provides evidence that explains reporting data provided pursuant to numerous Commission-approved settlement agreements, including details on the Company's short-term sales credit; components of internal trades; gas price volatility mitigation costs included in the ECA; monthly curtailment costs for renewable resources under PPAs, impacts of curtailments on PTCs for Company-owned renewable resources; 2023 costs associated with wind projects' cost sharing mechanism; 2023 PTC data; and true-ups reflected in Hearing Exhibit 106, Attachment JMT-1.⁸¹

44. Public Service submits that its detailed direct-case evidence demonstrates that its 2023 fuel, purchased energy, purchased wheeling, and other costs collected through the ECA and the 2023 purchased capacity costs collected through the PCCA were reasonable and prudent, and supports its other requests for relief.⁸²

1. Findings, Analysis and Conclusions

45. As an initial matter, based on the foregoing authorities and the nature of the Application, the ALJ finds that the Commission has jurisdiction and authority to decide this matter.⁸³

⁸⁰ See Hearing Exhibit 105 at 7-18 (transmission operations overview, function, and 2023 operations); 19-33 (must-run background and 2023 designations). See also, Hearing Exhibit 105, Attachment MAR-1.

⁸¹ See Hearing Exhibit 106 at 5-7 (reporting required by Commission-approved settlement agreements); 9-12 (2023 costs for wind project capital cost sharing, PTCs, and true ups); 12 (2023 curtailment costs and reporting requirements); 13 (resource costs). See also, Hearing Exhibit 106, Attachments JMT-1 to 7.

⁸² See Hearing Exhibit 100 at 7 and 10-11.

⁸³ See *supra*, ¶¶ 19; 28-29.

46. As noted, the Company provided voluminous evidence in its direct case. That evidence establishes that the Company prudently incurred the costs it seeks to recover; calculated the 2023 short-term sales margins consistent with the Company's tariffs and applicable Commission-approved Settlement Agreements; and that the cost savings and true-ups run through the ECA are appropriate.⁸⁴ Recovering costs through the ECA and PCCA appropriately distributes costs among customers in a just and reasonable manner, consistent with long-standing cost recovery practices.⁸⁵ The evidence also establishes that the Company's system operations are becoming increasingly more complex as it transitions into relying on more and more variable generation while managing anticipated load growth. The Company has had to be nimble to develop techniques to manage the complexities associated with those changes while at the same time working to ensure that it continues to provide reliable and safe service. This has required the Company to use all the tools available to it, including curtailments, the vast majority of which were required for balancing. Although the Company experienced setbacks and learning curves, the prudence standard does not require perfection.⁸⁶ What is more, the Company's direct-case evidence establishes that it took reasonable and prudent steps to avoid similar setbacks moving forward. For

⁸⁴ See Hearing Exhibit 101, at 11-21 (policy, background, and reporting requirements); at 24-27 (electric system evolution and impacts); 28-38 and 47-48 (2023 system operations overview and specific issues); 38-45 (wind projects); 45-46 (CSGs) 48-51 (SPP WEIS entry and impacts); Hearing Exhibit 101, Attachments MAM-1 to 2; Hearing Exhibit 102, at 8-14 (power operations overview and WEIS impacts); 14-19 (2023 power operations); 20-23 (hourly data) 23-26 (curtailments); Hearing Exhibit 102, Attachments MGS-1 to 2; Hearing Exhibit 103 at 7-10 (background on outages and derates in 2023); 11- 14 (2023 plant reliability improvements); 15-18 (2023 Cherokee 4 operations); 18-20 (reporting); 20-22 (wind projects); 23-24 (PPA reporting and Brush outages); 25-28 (2023 CSG operations); Hearing Exhibit 103, Attachments HDH-1 to 3; Hearing Exhibit 104 at 8-19 (ECA costs and calculation); 20- 22 (2023 ECA short-term sales margins); 22-26 (2023 wind project costs run through ECA); 26-30 (IVVO costs included in ECA); 31-33 (2023 PCCA contracts and costs); Hearing Exhibit 104, Attachments JRK-1 to 8; Hearing Exhibit 105 at 7-18 (transmission operations overview, function, and 2023 operations); 19-33 (must-run background and 2023 designations); Hearing Exhibit 105, Attachment MAR-1; Hearing Exhibit 106 at 5-7 (reporting required by Commission-approved settlement agreements); 9-12 (2023 costs for wind project capital cost sharing, PTCs, and true ups); 12 (2023 curtailment costs and reporting requirements); 13 (resource costs); Hearing Exhibit 106, Attachments JMT-1 to 7. See *supra*, ¶¶ 30-43.

⁸⁵ See *Holcim*, 562 P.3d at 62.

⁸⁶ Decision Nos. R22-0279 at ¶ 15; R10-0546-I at ¶ 17; C09-0596 at ¶ 41. See also, Decision No. R11-0995 at ¶ 68.

all these reasons, and those discussed above and in the Company's direct-case evidence, the ALJ concludes that the Company's direct-case evidence meets the Company's burden to establish by a preponderance of the evidence that its requested relief should be granted, including its burden to establish prudence, consistent with the above discussion and legal authorities.⁸⁷ For the same reasons, the ALJ concludes that the Company's direct-case evidence establishes a *prima facie* case for its requested relief.

B. Unopposed Settlement Agreement Terms

47. Public Service and Staff ("Settling Parties") are signatories to the Settlement Agreement.⁸⁸ UCA opposes the Agreement for the sole reason that it does not include provisions that disallow cost recovery but does not oppose Agreement terms unrelated to this.⁸⁹

48. The Agreement is intended to resolve all issues raised in this Proceeding with respect to the Company's Application.⁹⁰ The Settling Parties agree the provisions of the Settlement Agreement, as well as the process undertaken to reach the Agreement, are just, reasonable, and consistent with and not contrary to the public interest and should be approved and authorized by the Commission.⁹¹ The Company submits that the Agreement is in the public interest because it recognizes the reality of system operations in 2023; acknowledges certain challenges and questions raised; and provides a framework for continued collaboration and dialogue between the Settling Parties.⁹² Public Service submits that overall, the Agreement is a thoughtful negotiated

⁸⁷ *Supra*, fn. 84.

⁸⁸ Hearing Exhibit 110 at 2.

⁸⁹ January 9, 2025 Public Hearing Transcript, ("1/9/25 Pub. Tr.,") at 22: 1-6; UCA's SOP at 3-4.

⁹⁰ Hearing Exhibit 110 at 2.

⁹¹ *Id.* at 5. This Decision does not discuss general Agreement provisions that are common in Commission proceedings, as unnecessary. *See id.* at 4-7.

⁹² Hearing Exhibit 111, 5: 9-12.

compromise that resolves all issues between the Settling Parties while acknowledging both the complexity and broader picture of certain issues that extend beyond this Proceeding.⁹³

1. Company-Owned CSG Operations

49. The Agreement requires Public Service to provide a one-time \$140,000 credit to customers through the ECA associated with Company-owned CSG operations in 2023.⁹⁴ The credit will be applied in the first quarterly ECA after the Commission's final decision in this Proceeding.⁹⁵

50. In support, the Company explains that while it continues to improve its CSG operations, this Agreement term recognizes that these facilities faced performance challenges in 2023.⁹⁶ During the hearing, the Company clarified that as a part of its advanced site configuration (discussed in Direct Testimony), it revised software packages to better model weather impacts and resulting forecasts for anticipated CSG production, and that this will continue to be evaluated at the end of every year.⁹⁷ Public Service submits that flowing back some of the costs (*i.e.*, \$140,000) associated with these facilities to customers is a fair and appropriate resolution of Staff's and UCA's concerns about the Company's 2023 CSG operations.⁹⁸

2. Brush Outages in 2023 and 2024

51. The Company agrees to provide in its quarterly ECA stakeholder meetings information on the status of the Brush 1-3 and Brush 4 facilities until it files its 2024 ECA and PCCA annual prudence review application on August 1, 2025 ("2024 Prudence Review").⁹⁹ The Agreement states that in those quarterly ECA stakeholder meetings, the Company will include

⁹³ *Id.* at 13: 4-8.

⁹⁴ Hearing Exhibit 110 at 2.

⁹⁵ *Id.*

⁹⁶ Hearing Exhibit 111, 6: 12-14.

⁹⁷ 1/9/25 Pub. Tr., 238: 12-25—239: 1-5; 239: 18-25—240: 1-8 (discussing Hearing Exhibit 103, 27: 4-8).

⁹⁸ Hearing Exhibit 111, 6: 14-18.

⁹⁹ Hearing Exhibit 110 at 3.

information on the operational status of the Brush 1-3 and Brush 4 facilities and, as applicable and to the extent any unit continues to be out of service, the status of discussions with the facility owners, as permitted under confidentiality clauses of the applicable PPAs for those facilities, and to the extent that information is not subject to legal privileges.¹⁰⁰

52. The Agreement requires the Company to include in its 2024 Prudence Review information on unit operations and any additional payment refunds, liquidated damages, or other compensation associated with the outages at the Brush 1-3 and Brush 4 facilities in 2023 and 2024, and to explain how those funds were credited to customers.¹⁰¹ If no refunds, liquidated damages, or other compensation was obtained, the Company will explain why it was unable to recover such funds under the terms of the PPAs.¹⁰²

53. The Agreement provides that there will be no disallowance related to the status of Brush 1-3 or Brush 4 (for replacement power costs or otherwise) for purposes of this Proceeding.¹⁰³ The Settling Parties reserve the right to review the Brush outages for calendar year 2023 and raise concerns limited to factors within the Company's control for both 2023 and 2024 in the 2024 Prudence Review.¹⁰⁴

54. In support of these terms, Public Service explains that the Agreement acknowledges the ongoing nature of the Brush facilities' outages; provides a forum for continued communication and timely information sharing on these outages; ensures the full scope of outages and the Company's response will be considered in the 2024 Prudence Review; and provides an appropriate means to address these outages in a manner that is both transparent and in the public interest.¹⁰⁵

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 3-4.

¹⁰⁵ Hearing Exhibit 111, 8: 10-19.

The Company submits that by not allowing a disallowance related to the status of the relevant Brush facilities, the Agreement acknowledges that the Brush outages and the Company's responsive actions are an ongoing matter spanning both 2023 and 2024, making it more appropriate to address those issues in the Company's 2024 Prudence Review.¹⁰⁶ Public Service posits that this ensures procedural efficiency and that the full scope of the outages and the Company's responsive actions can be addressed together at an appropriate time.¹⁰⁷ What is more, the Company explains that it receives power from the Brush 1-3 and 4 facilities under PPAs and therefore has no control over those facilities' operation or outages.¹⁰⁸

3. Generation Fleet Performance

55. The Agreement requires the Settling Parties to discuss potential generation fleet performance metrics in the Company's quarterly ECA stakeholder meetings.¹⁰⁹ Public Service will present potential generation fleet performance metric(s) in its next electric rate case proceeding or another appropriate proceeding by April 30, 2026 and will either ask for Commission approval of one or more metrics or explain why any potential metric(s) is not feasible or appropriate.¹¹⁰ The Commission's established performance incentive mechanism ("PIM") principles will set the boundaries for the scope, purpose, and content of any PIM under discussion.¹¹¹ 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 initiated before that date.¹¹²

¹⁰⁶ *Id.* at 9: 7-11.

¹⁰⁷ *Id.* at 9: 11-14.

¹⁰⁸ *Id.* at 9: 14-17.

¹⁰⁹ Hearing Exhibit 110 at 4. The Agreement cites Decision Nos. C22-0270 and C22-0459 as examples of Decisions in which the referenced Commission-established PIM principles. *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

56. In support, Public Service explains that Staff raised concerns in Answer Testimony about the Company's generation fleet performance in 2023, particularly as it would have appeared under the now-expired Equivalent Availability Factor Performance Mechanism ("EAFPM").¹¹³ Because the Company's generation fleet is in the process of a dramatic shift toward intermittent and disparately located resources, the Company submits that the EAFPM is not an appropriate lens through which to evaluate the Company's fleet generation performance.¹¹⁴ Public Service states that identifying an appropriate metric requires time, collaboration, detailed thought and input, and that this Agreement term allows for that alongside the Company's commitment to present a potential metric in an appropriate proceeding by a date certain.¹¹⁵

4. Wind Resource Reliability

57. The Settling Parties agree that the Company's ongoing Just Transition Solicitation in Proceeding No. 24A-0442E ("Just Transition Proceeding") is the appropriate forum to consider and assess wind resource reliability for purposes of resource planning and capacity accreditation methodologies for other technology types.¹¹⁶ In support, the Company explains that although wind resource reliability factors into many Commission proceedings (including this one), a resource planning proceeding is a more appropriate forum to consider and assess wind resource reliability and wind and other technology types' capacity accreditations.¹¹⁷ Public Service submits that the Just Transition Proceeding is such an appropriate proceeding.¹¹⁸

¹¹³ Hearing Exhibit 111, 10: 11-14, citing Hearing Exhibit 400, 11: 1-17—15: 1-3.

¹¹⁴ *Id.* at 10: 14-18.

¹¹⁵ *Id.* at 10: 18-20—11: 1-4.

¹¹⁶ Hearing Exhibit 110 at 4.

¹¹⁷ *See* Hearing Exhibit 111, 11: 18-21.

¹¹⁸ *Id.* at 11: 21—12: 1-3.

5. Findings, Analysis, and Conclusions

58. For the reasons discussed, and because these terms are unopposed, the ALJ approves the above Agreement terms without modification. Requiring the Company to flow back \$140,000 associated with Company-owned CSGs to customers recognizes that these facilities faced performance challenges in 2023 and is a reasonable resolution to concerns about the Company's CSG operations in 2023. What is more, as discussed, the Company has taken appropriate steps to address the CSG issues that arose in 2023. Agreement terms concerning Brush outages reflect the reality that the outages and the Company's responsive actions are an ongoing matter that span calendar years 2023 and 2024. Addressing those issues in the Company's 2024 Prudence Review allows the Commission to consider the full scope of the outages and the Company's responsive actions in a more efficient manner. This added efficiency may result in cost savings associated with avoiding duplicative or overlapping litigation. Other Brush terms promote transparency by ensuring continued communication and timely information sharing on Brush outages, which serve the public interest. Fleet performance Agreement terms will give parties and stakeholders the time needed to develop an appropriate metric through which the Company's fleet performance may be evaluated. Indeed, thorough evaluation, input, and collaboration on a potential metric serves the public interest. The Agreement sets appropriate guardrails by requiring the Company to present a proposed metric or explain why such a metric is not feasible or appropriate by a date certain. Assessing wind resource reliability in the Just Transition Proceeding appropriately ensures that this assessment is not in a vacuum but is done in the broader context of resource planning.

59. For all these reasons, the ALJ finds that the preponderance of the evidence establishes that the unopposed Agreement terms serve the public interest, represent a fair and

reasonable compromise between the Settling Parties, and are just, reasonable, and not discriminatory. As such, the ALJ approves the above Agreement terms without modification.

C. Opposed Settlement Agreement Terms

60. The Settling Parties agree that the Commission should approve the Company's Application, including all requested relief, subject to the modifications and conditions in the Agreement.¹¹⁹ Since the Agreement does not provide for disallowances, if this provision is approved, the Company will recover all costs requested in the Application and supporting materials.

1. UCA's Position

a. Burden of Proof

61. UCA argues that the Company has the burden to prove that it has met the prudence standard in Rule 4608(c), 4 CCR 723-4.¹²⁰ UCA argues that the Company incorrectly articulates the relevant burdens, taking issue with the Company's assertion that utility expenditures have a rebuttable prudence presumption and that the burden of proof and moving forward shifts to interveners who oppose a utility's proposed cost recovery.¹²¹ UCA submits that the Company improperly relies on Decision No. R20-0144 (issued March 9, 2020) in Proceeding No. 19A-0425E ("Decision No. R20-0144"), Decision No. R22-0279 (issued May 11, 2022) in Proceeding No. 21A-0192EG ("Decision No. R22-0279"), and Decision No. C12-0159 (issued February 14, 2012) in Proceeding No. 11A-0325E ("Decision No. C12-0159").¹²² UCA explains that Decision No. C12-0159 applied inapplicable statutory language requiring a rebuttable prudence

¹¹⁹ Hearing Exhibit 110 at 2.

¹²⁰ See UCA's SOP at 6-7.

¹²¹ See *id.* at 9-12.

¹²² See *id.* at 7-13.

presumption, which does not support a general rebuttable prudence presumption here.¹²³ UCA argues that because Decision Nos. R20-0144 and R22-0279 improperly rely on Decision C12-0159, by extension, the Company's reliance on those Decisions is also improper.¹²⁴

62. The UCA argues that there are compelling public policy reasons against the burdens of proof that the Company outlines. First, UCA argues that under the Company's argument, if it meets its initial burden merely by filing an application with supporting exhibits, and no intervenor produces sufficient evidence of imprudence, the utility's prudence presumption is unrebutted and the Commission may impose costs on ratepayers without evaluating the quality of the evidence to determine that it establishes prudence.¹²⁵ Second, UCA asserts that interveners and Commissioners do not have inside information about utilities' decision-making and that with this "information asymmetry," it is unclear how an intervenor or regulator could practically build an equally factual case for imprudence to rebut a prudence presumption.¹²⁶ It argues that this information asymmetry "demonstrates how UCA was not able to build an equally factual case for imprudence to rebut the presumption of prudence as advocated by the Company."¹²⁷

63. For all these reasons, UCA urges the Commission to find that no rebuttable prudence presumption applies; reject the Company's arguments that the burdens and rebuttable prudence presumption articulated in Decision Nos. R20-0144 and R22-0279 apply here; and find that the Company "fully carries the burden of proof to demonstrate that it acted in a prudent way and, consistent with Decision No. C12-0159, the Company cannot not wait until the development of rebuttal testimony in order to carry its burden of proof."¹²⁸

¹²³ *See id.* at 7-8.

¹²⁴ *Id.*

¹²⁵ *See id.* at UCA's SOP at 12. This argument is addressed and rejected in ¶ 23 above.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* at 13.

b. Proposed Disallowances

64. Some background is necessary to understand the parties' position on this issue. In Answer Testimony, UCA argued that the Company should not be permitted to recover \$3,654,955 of costs primarily associated with 90 instances where the Company ran combustion turbine generating units ("CTs") while curtailing renewable generation, or while pumping its Cabin Creek hydroelectric plant ("Cabin Creek") because these decisions resulted in imprudently incurred costs.¹²⁹ In its Rebuttal Testimony responding to this, the Company disagreed that the relevant decisions were imprudent; objected to UCA's proposed disallowances; and explained why CTs may be prudently run while curtailing renewable generation or pumping Cabin Creek.¹³⁰ After the Company filed Rebuttal Testimony, UCA sought discovery asking the Company to identify whether and if so, how, the circumstances described in Rebuttal Testimony applied to the 90 instances at issue.¹³¹ Subject to its objections, the Company provided discovery analyzing the top 8 (by proposed disallowance amount) of the 90 instances that UCA identified.¹³² Based on the Company's analyses of the referenced eight instances and actual average curtailment costs, in its Surrebuttal Testimony, UCA reduced its initial disallowance recommendation to approximately \$2.9 million.¹³³ Through its Second Motion to Compel, UCA continued to seek discovery from the Company identifying whether and if, so how, the circumstances described in Rebuttal Testimony applied to the remaining 82 (of 90) instances at issue, which was denied.¹³⁴

¹²⁹ Hearing Exhibit 300HC, 8: 7-12—9 (Revised Table CN-1); 11: 1-7—12 (Table CN-2); 17: 19-22—18: 1-3.

¹³⁰ See *e.g.*, Hearing Exhibit 108, 5: 13-20—6: 1-5; 9: 1-15; 19: 3-21—20: 1-6.

¹³¹ See UCA's First Motion to Compel at 2; Decision No. R25-0051-I at 5-6.

¹³² Hearing Exhibit 301, Attachment CN-6HC (Company's analyses).

¹³³ Hearing Exhibit 301, 4: 2-8; 6: 9-23—15: 1-22; Hearing Exhibit 301HC, at 14 (Table CN-6) (detailed breakdown of UCA's adjustments). See Hearing Exhibit 301, 5: 19-21—6: 1-8.

¹³⁴ See Second Motion to Compel; Decision No. R25-0051-I.

65. UCA argues that it was imprudent or “potentially imprudent”¹³⁵ to run expensive CTs while curtailing renewable energy or pumping Cabin Creek because this created unnecessary costs and unnecessarily expensive power—to the tune of \$1,721,887 for curtailments and \$1,182,302 for pumping Cabin Creek.¹³⁶ As to curtailments, UCA asserts that costs could have been reduced or eliminated if the Company stopped or reduced generation from high cost CTs and stopped or reduced renewable energy curtailment, which would have resulted in the same amount of generation on the system.¹³⁷ As to Cabin Creek, UCA asserts that pumping Cabin Creek with high-cost CTs results in “very high-cost power” and it would be much less costly to use CTs directly when they are needed rather than pump Cabin Creek with CTs running.¹³⁸ UCA submits that the Company could have reduced costs if it turned off or reduced generation at CTs and turned off or reduced pumping at Cabin Creek, which would not impact the system.¹³⁹ UCA agrees that there are circumstances, such as those that the Company identified in its Rebuttal Testimony, where it may be reasonable to run CTs and either curtail renewable energy or pump Cabin Creek.¹⁴⁰ UCA highlights that it identified nine instances where it considered recommending a disallowance but ultimately did not based on such circumstances.¹⁴¹ That said, UCA states that it generally cannot analyze whether such circumstances exist in certain instances because the hourly data that the Company provided in its direct case does not include such information, and that it attempted to obtain this information in discovery.¹⁴²

¹³⁵ Hearing Exhibit 301, 3: 12-15.

¹³⁶ *Id.* at 14 (Table CN-6). *See id.* at 6: 9-23—15: 1-22. *See* Hearing Exhibit 300, 4: 6-10; 4: 18-22; 10: 4-5.

¹³⁷ Hearing Exhibit 300, 5: 23—6: 1-4.

¹³⁸ *Id.* at 10: 7-9.

¹³⁹ *Id.* at 10: 19-20.

¹⁴⁰ Hearing Exhibit 301, 4: 5-8. *See also id.* at 9: 1-8; 10: 8-14.

¹⁴¹ *Id.* at 4: 11-14.

¹⁴² *Id.* at 5: 1-5; UCA’s SOP at 3.

66. UCA submits that it met its burden (if any)¹⁴³ by raising the issue of imprudence or “potential imprudence” for the 90 identified events, based on principles of economic dispatch.¹⁴⁴ UCA acknowledges that the Company identified reasonable circumstances under which it may curtail renewable energy or pump Cabin Creek while running CTs, but this does not “rebut UCA’s concerns” or otherwise meet the Company’s burden of proof because it did not demonstrate that those circumstances existed for all 90 events at issue.¹⁴⁵ UCA admits that the Company analyzed 8 of the 90 instances at issue, but asserts that the remaining 82 instances remain unexplained.¹⁴⁶ It argues that the 8 instances analyzed do not serve as a proxy for prudence for the remaining 82 events, and that a determination of prudence for one event cannot be used to establish, without evidence, prudence for all events.¹⁴⁷ UCA rehashes some assertions from its Motions to Compel,¹⁴⁸ and argues that it is not unduly burdensome for the Company to research and analyze the remaining 82 instances at issue, which would take an estimated 164 hours, and that the burden of doing so does not relieve the Company from the obligation to explain its decision-making.¹⁴⁹ For all these reasons, UCA argues the Company failed to meet its burden, and the Commission should approve its disallowance recommendations.¹⁵⁰

¹⁴³ It is not clear that UCA concedes it has any burdens in this Proceeding. *See generally*, UCA’s SOP.

¹⁴⁴ *Id.* at 15-16; 21.

¹⁴⁵ *See id.* at 16-17.

¹⁴⁶ *Id.* at 19.

¹⁴⁷ *Id.* at 28.

¹⁴⁸ *See id.* at 26-28.

¹⁴⁹ *Id.* at 27-28.

¹⁵⁰ *Id.* at 28-29.

2. Settling Parties' Position

a. Burden of Proof

67. The Settling Parties agree that the prudence standard in Rule 4608(c) applies.¹⁵¹ They submit that the utility bears the ultimate burden of proof to establish its actions were prudent, which is typically met through written testimony and exhibits in support of a request to recover costs.¹⁵² They describe such filings as establishing a *prima facie* case demonstrating prudence.¹⁵³ The Settling Parties argue that although the Company bears the ultimate burden of proof, because utility expenditures have a rebuttable prudence presumption, a party contesting such costs bear the burden of making a *prima facie* case of imprudence.¹⁵⁴ They explain that when an intervener contests prudence, the burden shifts to the intervener, who bears the burden of going forward in its answer testimony.¹⁵⁵ The Settling Parties argue that parties contesting prudence can rebut the utility's initial showing through evidence identifying specific actions and associated expenditures that were not prudent and that if the party contesting prudence presents sufficient evidence to bring the prudence of a utility's actions or inaction into question, the burden of going forward shifts back to the utility to show that the questioned action or inaction was prudent.¹⁵⁶

b. Response to Proposed Disallowances

68. The Settling Parties disagree with UCA's proposed disallowances and argue that the Company met its burden of proof while UCA did not. The Settling Parties submit that the Company met its initial burden to make a *prima facie* prudence showing through its Application

¹⁵¹ Joint SOP at 21, fn. 84.

¹⁵² *Id.* at 6, citing § 24-4-105(7), C.R.S.; Rule 1500, 4 CCR 723-1; Decision Nos. R22-0279 at ¶ 16; R20-0144 at ¶ 29; C12-0159 at ¶¶ 38-40.

¹⁵³ *Id.*

¹⁵⁴ *Id.*, citing Decision Nos. R20-0144 at ¶ 27; C12-0159 at ¶¶ 38-40; *W. Distrib. Co.*, 841 P.2d at 1057-1059.

¹⁵⁵ *Id.*, citing Decision Nos. R20-0144 at ¶ 27; C12-0159 at ¶¶ 38-40.

¹⁵⁶ *Id.* at 6-7, citing Decision Nos. R22-0279 at ¶ 16; R20-0144 at ¶ 29; C12-0159 at ¶ 40; C12-1107 at ¶ 30 (issued September 24, 2012) in Proceeding No. 11A-0833E; *W. Distrib. Co.*, 841 P.2d at 1057-1059.

and direct-case evidence.¹⁵⁷ They explain that Public Service's initial filings include numerous large data sets and operational reporting demonstrating that the Company's system operations and the associated expenses recovered through the ECA and PCCA in 2023 were prudent.¹⁵⁸ The Settling Parties argue that based on this initial *prima facie* showing, Public Service is entitled to a rebuttable prudence presumption for those costs.¹⁵⁹

69. Public Service asserts that UCA did not meet its burden to make a *prima facie* case of imprudence in its Answer Testimony. Since UCA was permitted to file Surrebuttal Testimony, and to simplify the record, the Company requests that the ALJ find that UCA's theories fail based on the entirety of the record and that the Company met its ultimate burden of persuasion.¹⁶⁰

70. The Company argues that UCA essentially claims that any operation of CTs during times of curtailment or pumping at Cabin Creek is *de facto* imprudent because this results in unnecessary costs that can be reduced or eliminated.¹⁶¹ Public Service explains that the mere coincidence of CT generation and curtailment or pumping does not indicate imprudence because this may occur for many reasons that arise in the ordinary course of business.¹⁶² Examples where this may happen in the ordinary course of business include:

- Curtailment may be necessary while running CTs to maintain a balance of power flows across constrained paths.¹⁶³

¹⁵⁷ *Id.* at 9.

¹⁵⁸ *Id.* at 9-10, citing, for example, Hearing Exhibit 102, Attachment MGS-1HC (hourly load and generation data); Hearing Exhibit 102, Attachment MGS-2 (monthly aggregated curtailment data); Hearing Exhibit 103; Hearing Exhibit 103, Attachment HDH-1HC (EAG and GADS data); Hearing Exhibit 103, Attachment HDH-2 (forecasted versus actual owned wind annual production data); Hearing Exhibit 103, Attachment HDH-3H (owned versus PPA wind capacity factor data); Hearing Exhibit 105, Attachment MAR-1 (generation must-run designations); Hearing Exhibit 106, Attachment JMT-4C (curtailment costs for PPA generation); Hearing Exhibit 106, Attachment JMT-5 (curtailment PTC impacts for owned generation).

¹⁵⁹ *Id.* at 10.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 11.

¹⁶² *See id.*

¹⁶³ Hearing Exhibit 108, 9: 4-6.

- Curtailment may be instructed by the SPP WEIS (after April 1, 2023).¹⁶⁴
- CTs may need to run to manage renewable generation volatility or to manage renewable ramp events that are not forecasted, so the Company maintains reserves that are available to respond to system changes.¹⁶⁵
- CTs may be run for other reasons unrelated to economic dispatch, such as for mandatory testing or local transmission support.¹⁶⁶
- Pumping at Cabin Creek may be necessary while CTs are operating to ensure a full upper reservoir for adequate energy and reserves over future peak periods.¹⁶⁷
- Decommitting CTs during pumping might not be feasible while still meeting energy, regulation, and reserve requirements.¹⁶⁸
- The startup costs of briefly shutting down CTs while pumping Cabin Creek may outweigh the economic benefits of waiting to begin pumping until after decommitment.¹⁶⁹
- Cabin Creek may be pumped for non-economic reasons, such as testing.¹⁷⁰
- Cabin Creek is not capable of changing load in pump mode, so other generation is needed as a source of regulation while Cabin Creek is pumping.¹⁷¹

71. Public Service highlights that UCA affirmatively agrees that these are valid reasons for CTs to be run while curtailing renewable resources or pumping Cabin Creek.¹⁷² The Company argues that all of this evidence is sufficient for it to prevail and for the ALJ to conclude that the Company's operations were prudent despite the coincidences UCA raised.¹⁷³ Nonetheless, Public Service submits that to remove any doubt about the prudence of its actions, it voluntarily reconstructed the top eight events by dollar amount and provided analyses of the operational

¹⁶⁴ *Id.* at 12: 16-21—14: 1-2. During the hearing, the Company clarified that it does not suggest that all curtailments that occurred after April 1, 2023 were directed by SPP, and that the WEIS market does not cover reliability-related responsibilities or energy-efficiency compliance. *See* 1/9/25 Pub. Tr., 224: 20-25—225: 1-16.

¹⁶⁵ Hearing Exhibit 108, 9: 8-13.

¹⁶⁶ *Id.* at 20: 1-2.

¹⁶⁷ *Id.* at 19: 9-11.

¹⁶⁸ *Id.* at 19: 12-14.

¹⁶⁹ *Id.* at 19: 15-17.

¹⁷⁰ *Id.* at 20: 3.

¹⁷¹ *Id.* at 20: 4-6.

¹⁷² Joint SOP at 12, citing Hearing Exhibit 301, 4: 2-8.

¹⁷³ *Id.*

conditions that lead to the relevant dispatch decisions.¹⁷⁴ The Company's analyses determined that CTs were run while curtailing renewable resources for testing; as a must-run condition for transmission reliability; to meet needed reserves; due to a transmission instruction for reliability reasons; due to renewable energy volatility (*i.e.*, wind generation well above forecast); and due to a transmission outage.¹⁷⁵ Similarly, the Company determined that CTs were run while pumping Cabin Creek to ensure sufficient energy and reserves were available due to a generation unit outage; because it was not feasible to decommit CTs while still meeting energy, regulation, and reserve requirements; for testing; to ensure a full upper reservoir for adequate energy and reserves over future peak periods; and due to a transmission constraint.¹⁷⁶

72. During the hearing, the Company provided additional evidence concerning the eight events that it analyzed and elaborated on some of the broader circumstances discussed in its Rebuttal Testimony. Starting with the latter, Public Service emphasized that operators must consider numerous factors in different ways depending on the operating system conditions at the time the decision is made, including factors that are regularly changing.¹⁷⁷ For example, operators must consider the amount of installed capacity on the system, including increasing solar and wind generation (which evolve); the season of the year; and the forecasted production.¹⁷⁸ Public Service explained that due to CTs' characteristics, the Company is limited in the number of times it can commit and decommit CTs within a short period of time.¹⁷⁹ For example, once a CT is committed,

¹⁷⁴ *Id.* at 12-13. The Company explains that these 8 events account for approximately 20 percent of UCA's disallowance request for running CTs while curtailing and approximately 25 percent of UCA's disallowance request for running CTs while pumping Cabin Creek. *Id.* at 13.

¹⁷⁵ See Hearing Exhibit 301, Attachment CN-6HC at 1-2.

¹⁷⁶ *Id.* at 3-4.

¹⁷⁷ 1/9/25 Pub. Tr., 86: 3-12.

¹⁷⁸ *Id.* at 86: 3-12.

¹⁷⁹ *Id.* at 84: 5-8.

it may have a minimum run-time, and once decommitted, it may have a minimum downtime.¹⁸⁰ If wind production is forecasted to decrease, the Company would need to ensure that CTs are running so they are available to meet the anticipated need while also accounting for minimum run- and down-times.¹⁸¹ Due these types of factors, it is not unusual to have brief periods of overlap where CTs might be running while renewable energy is being curtailed, but that overlap helps ensures that when the Company transitions between generation resources, production is sufficient to meet energy and reserve needs.¹⁸² If the Company decommits a unit with a minimum downtime too early, it may face an energy or reserve deficiency, requiring it to commit another unit, which may result in costs that could have been avoided.¹⁸³ Energy deficiencies have other consequences. For example, if faced with a severe enough energy deficiency, the Company may have to interrupt service to customers.¹⁸⁴ An energy deficiency could also mean that Public Service does not meet NERC standards governing the amount of energy and reserves that it must have available at a given time for system balancing, which may result in fines and other compliance implications.¹⁸⁵ As a result, when making dispatch decisions, the Company is constantly looking at real-world physical limitations associated with its generation units and balancing those against forecasts.¹⁸⁶

73. As to the former, starting with incidents where the Company ran CTs while curtailing, based on the Company's analysis, UCA withdrew proposed disallowances for the [REDACTED] event for the [REDACTED] due to testing, but not for the

¹⁸⁰ *Id.* at 84: 13-15.

¹⁸¹ *Id.* at 84: 19-25.

¹⁸² *See id.* at 85: 1-21.

¹⁸³ *See id.* at 86: 13-25—87: 1-2.

¹⁸⁴ *Id.* at 87: 17-19.

¹⁸⁵ *Id.* at 87: 20-25—88: 1-2.

¹⁸⁶ *See id.* at 84: 8-12.

[REDACTED], which were being operated at the same time.¹⁸⁷ Public Service explained that the [REDACTED], had scheduled testing and tuning during the relevant period.¹⁸⁸ The Company added that the dispatch concerns extended through [REDACTED].¹⁸⁹ As to the event [REDACTED], the Company responded to UCA's complaint that it needs more information on the significance of the transmission issue at [REDACTED].¹⁹⁰ As background, Public Service explained that [REDACTED] where a significant amount of renewable generation interconnects via multiple gen-ties (transmission lines that are not part of the transmission system but deliver energy from renewable projects to the point of interconnection).¹⁹¹ As to the specific event, the Company received limited instructions from the transmission control center [REDACTED] to keep output at [REDACTED] below a specified level.¹⁹² Public Service explained that operators do not have discretion to refuse instructions from transmission control or other reliability entities because it must maintain reliability for the entire electric system and meet NERC standards.¹⁹³ As to the [REDACTED] event, based on the Company's analysis, UCA withdrew its disallowance requests due to testing at the Company's [REDACTED] but maintained its request to disallow costs from running the [REDACTED].¹⁹⁴ The Company explained that when units such as [REDACTED] are testing, they are generally not dispatchable, which means they are not available for use in reaction to

¹⁸⁷ Hearing Exhibit 301 HC, 9: 7-11. *See* January 9, 2025 Highly Confidential Hearing Transcript ("1/9/25 HC Tr."), 92: 4-7.

¹⁸⁸ 1/9/25 HC Tr., 92: 10-15.

¹⁸⁹ *Id.* at 91: 18-25—92: 1-3.

¹⁹⁰ *See* Hearing Exhibit 301HC, 9: 19-22.

¹⁹¹ 1/9/25 HC Tr., 93: 12-20.

¹⁹² *Id.* at 94: 2-5; 94: 13-17.

¹⁹³ *Id.* at 95: 14-22.

¹⁹⁴ Hearing Exhibit 301HC, 10: 5-17.

fluctuations in variable energy resource output.¹⁹⁵ The Company expected wind to decrease, so it needed [REDACTED] to run for ramp-up, to cover that forecasted decrease and provide regulation and energy.¹⁹⁶

74. Turning to events where the Company ran CTs while pumping at Cabin Creek, UCA withdrew its disallowance request for running [REDACTED] as it was run for testing, but maintained its disallowance requests for running [REDACTED] and the [REDACTED] [REDACTED] while pumping Cabin Creek.¹⁹⁷ Public Service explained that [REDACTED] was also being run for testing.¹⁹⁸ As to the [REDACTED] run that day, the Company explained that those CTs were run in [REDACTED] to cover energy and reserve obligations to manage a transition period between renewable generation ramping up and decommitting CTs in response to that.¹⁹⁹ Public Service highlighted this as an example of the difficulty associated with attempting to reconstruct events after the fact given how much the conditions for each hour of the day impact decisions.²⁰⁰ As to the [REDACTED] event, UCA notes that the Company used a minimal amount of Cabin Creek generation in the following [REDACTED] days, even though its analysis states that it ran CTs and pumped Cabin Creek to ensure it had stored energy for those days.²⁰¹ In fact, UCA increased its disallowance request for this event because it asserts that the Company did not pump during the most economic time of the day.²⁰² The Company explained that the decision to operate a storage resource such as Cabin Creek is based on an analysis of the expected energy and reserve

¹⁹⁵ 1/9/25 HC Tr., 99: 4-8.

¹⁹⁶ *Id.* at 99: 9-18.

¹⁹⁷ Hearing Exhibit 301HC, 12: 1-7.

¹⁹⁸ 1/9/25 HC Tr., 103: 7-10; 103: 16-19; Hearing Exhibit 301, Attachment CN-6HC at 3.

¹⁹⁹ 1/9/25 HC Tr., 105: 6-11.

²⁰⁰ *See id.* at 104: 22-25—105: 1-11.

²⁰¹ *See* Hearing Exhibit 301HC, 12: 10-22.

²⁰² *See id.* at 12: 14-22.

needs, and that Cabin Creek is an effective resource to carry off-line contingency reserves.²⁰³ Because Cabin Creek has a fast start-up time and a reliable start-up, as long as the upper reservoir has stored water, regardless of whether its producing for energy purposes, that facility provides valuable ancillary services to the system.²⁰⁴ A decision to hold back water in the upper reservoir for ancillary services (as was the case here) versus operating the unit for energy is not unusual and is made on a daily basis.²⁰⁵ As to UCA's assertion that the Company did not pump during the most economic time of the day, Public Service explained that the unit was scheduled for testing, which required that certain personnel be in place to take measurements; this forced the Company to pump [REDACTED] so that it could get the correct personnel in place.²⁰⁶

75. As to the event on [REDACTED] UCA argued that because the Company pumped Cabin Creek the following day while [REDACTED] was still down and CTs were not running, it could have done so on [REDACTED] as well.²⁰⁷ Public Service explained that on [REDACTED] when it pumped Cabin Creek without running CTs, variable energy resource production was higher than on [REDACTED] such it was sufficient to cover pump and demand needs without the need to commit CTs.²⁰⁸ As to the [REDACTED] event, UCA withdrew its request for disallowances relating to running Cabin Creek A for testing, but not for Cabin Creek B.²⁰⁹ The Company explained that Cabin Creek A's testing required specific measurements be taken and that to do so, Cabin Creek B had to operate at the same time.²¹⁰ This

²⁰³ 1/9/25 HC Tr., 105: 25—106: 1-5.

²⁰⁴ *Id.* at 106: 6-12.

²⁰⁵ *Id.* at 106: 13-18.

²⁰⁶ *Id.* at 107: 4-14.

²⁰⁷ Hearing Exhibit 301HC 11: 10-19.

²⁰⁸ 1/9/25 HC Tr., 100: 20-25—101: 1-5.

²⁰⁹ Hearing Exhibit 301HC, 13: 6-12.

²¹⁰ 1/9/25 HC Tr., 108: 4-9.

is an example of a test that must be performed with both units operating.²¹¹ In response to UCA's contention that the Company failed to justify running the [REDACTED] on that date,²¹² the Company explained that it ran [REDACTED] to meet energy and reserve requirements during Cabin Creek's testing.²¹³ Had it not done so, the Company would have had to commit another resource to replace those resources.²¹⁴

76. The Company argues that UCA failed to meet its burden to establish that the Company imprudently incurred the costs at issue. In support, Public Service argues that during the hearing, UCA did not attempt to challenge the Company's analyses of the 8 events; did not offer particularized evidence of imprudence as to any of the remaining 82 events; and did not explain why the overarching reasons the Company provided in Rebuttal Testimony for the challenged dispatch decisions are flawed or do not apply to any of the remaining 82 events.²¹⁵ Public Service submits that instead, UCA merely relies on its conclusory imprudence assertions.²¹⁶ Even where UCA analyzed decisions to run CTs while pumping at Cabin Creek, the Company asserts that UCA only considered the hours during which CTs ran while pumping, and did not present evidence on or evaluate the hours leading up to pumping, or the forecasted conditions in the subsequent hours or days, or otherwise establish that the Company acted imprudently based on information it knew or should have known.²¹⁷ The Company argues that at a foundational level, UCA failed to present evidence that the Company acted unreasonably, and that its theory amounts to an allegation that the Company's actions were imperfect (at best) even though perfection is not the prudence

²¹¹ *Id.* at 108: 10-14.

²¹² Hearing Exhibit 301HC, 13: 8-10.

²¹³ 1/9/25 HC Tr., 108: 20-25.

²¹⁴ *Id.* at 109: 1-4.

²¹⁵ *See* Joint SOP at 18.

²¹⁶ *Id.* at 19.

²¹⁷ *Id.* at 20-21, citing 1/9/25 Pub. Tr., 273: 2-25—274: 1-4.

standard.²¹⁸ Even taking at face value UCA's assertion that the Company might have reduced CT generation during the challenged events, UCA failed to produce evidence establishing that based on the information the Company knew when it made those decisions, it could have made different dispatch decisions, or that its decisions were incorrect, unreasonable, or imprudent.²¹⁹ Nor does UCA weigh the costs and benefits of any purported alternate dispatch decisions,²²⁰ or explain whether its proposed different dispatch decisions (if any) were possible or reasonable.²²¹

77. The Company argues that UCA attempts to change the burden of proof by requiring the Company to disprove "potential imprudence."²²² It asserts that it does not have the burden to reconstruct a timeline of every single event that UCA identified and disprove UCA's conclusory imprudence assertions, which is burdensome and disproportionate to the needs of the case.²²³

78. The Company submits that its analyses establishes that each of the eight events discussed above demonstrate that the Company operated its system prudently.²²⁴ Public Service describes these eight events as the centerpieces of UCA's theory and the events that UCA asserts had the biggest impact on the alleged potential imprudence.²²⁵ The Company argues that the ALJ should infer from the evidence relating to these 8 top-dollar events that the Company acted prudently as to the remaining 82 events for similar reasons (*i.e.*, the analyzed events are a representative sample of its prudent decision-making for the other challenged decisions).²²⁶ Similarly, Public Service asserts that the ALJ should infer from the absence of evidence

²¹⁸ *Id.* at 21-22, citing Decision No. R22-0279 at ¶¶ 15 and 195.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.* at 24, citing 1/10/25 Tr., 20: 20-25—21: 1-6.

²²² *Id.*

²²³ *See id.* at 19.

²²⁴ *Id.*

²²⁵ *Id.* at 13.

²²⁶ *See id.* at 19; 1/9/25 Pub. Tr., 222: 16-25—223: 1-18.

establishing imprudence as to these eight events that UCA's theory is unpersuasive and that based on the preponderance of the evidence as a whole, the Company rebutted those theories.²²⁷ The Company highlights that the evidence shows that in each one of the eight instances, it acted prudently and that UCA's assertions of "potential imprudence" are misplaced in each instance.²²⁸ For the reasons discussed, the Company submits that UCA failed to meet its burden and the Company met its burden.

79. Through its own investigation in this Proceeding, Staff found that the Company satisfactorily explained the reasons and circumstances leading to its dispatch decisions, and did not find "any basis" to support a conclusion that the Company imprudently dispatched its system in 2023.²²⁹

3. Findings, Analysis, and Conclusions

a. Burden of Proof

80. For the reasons discussed, the ALJ finds that unless provided for in statute, rule, or Commission order, no rebuttable prudence presumption attaches to a utility's expenditures. The Colorado Supreme Court has found that a rebuttable presumption shifts the burden of going forward²³⁰ to the party against whom it is raised (*i.e.*, an intervener).²³¹ If that party fails to go forward with evidence rebutting the presumption, the facts presumed are established as a matter of law.²³² Thus, under Colorado Supreme Court authority, if a rebuttable prudence presumption generally applies to a utility's expenditures and no intervener challenges that presumption, the

²²⁷ Joint SOP at 19.

²²⁸ *Id.*

²²⁹ 1/9/25 Pub. Tr., 246: 14-21.

²³⁰ *Krueger v. Ary*, 205 P.3d 1150, 1154 (Colo. 2009). A rebuttable presumption does not shift the burden of proof but only shifts the burden of going forward with evidence. *Id.*

²³¹ *Id.*

²³² *Id.* Conversely, if that burden is met, the presumption does not continue in the case. *Id.*

presumed facts—that the utility’s expenditures are prudent—would be established as a matter of law without the need for evidence.²³³ In that circumstance, although the utility would still bear the burden of proof that its requested relief should be granted, in a cost recovery proceeding where the primary question is whether the costs at issue were prudently incurred, the utility could meet the bulk of its burden by relying on the prudence presumption. This may undermine the Commission’s role to ensure that utilities charge just and reasonable rates and to determine matters within the public interest.²³⁴ This includes the Commission’s duty to ensure that a utility recovers only its prudently incurred costs to serve customers.²³⁵ For the reasons discussed, the ALJ finds that affording a general rebuttable prudence presumption for utility expenditures when none is required by statute, rule, or Commission order is inconsistent with the Commission’s duty to make the public interest first and paramount and to ensure that utilities charge just and reasonable rates.²³⁶

81. What is more, such a presumption contradicts the plain language of Rule 4608(c), 4 CCR 723-4, which establishes the prudence standard for cost recovery here. Rule 4608(c) includes no language stating or even implying that a utility starts a prudence review proceeding with a rebuttable prudence presumption or that a utility only has to meet the Rule’s prudence standard if the prudence presumption is not rebutted.²³⁷ Indeed, no statute, Commission rule, or order establishes a general rebuttable prudence presumption for utility expenditures in cases like

²³³ See *id.* The Company’s rebuttable presumption argument is somewhat confusing because on the one hand, it argues that utility expenditures have a rebuttable prudence presumption (generally), and on the other, it argues that based on the Company’s initial *prima facie* showing, it is entitled to a rebuttable prudence presumption. Joint SOP at 6 and 10. This implies that the Company misunderstands the meaning and impact of rebuttable presumptions, which are not contingent upon a party making a *prima facie* case supporting the presumption. See *Krueger v. Ary*, 205 P.3d at 1154.

²³⁴ See §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S.; *CF&I Steel, L.P.*, 949 P.2d at 584; *Caldwell v. Pub. Utils. Comm’n*, 692 P.2d 1085, 1089 (Colo. 1984).

²³⁵ This aligns with Rule 4608’s requirement that utilities seeking to recover costs of service must establish that those costs were prudently incurred. Rule 4608(c), 4 CCR 723-4.

²³⁶ See *Pub. Serv. Co. of Colo.*, 350 P.2d at 549.

²³⁷ See Rule 4608(c), 4 CCR 723-4.

this, and the Settling Parties cite none. Instead, they rely on Decision Nos. R20-0144 and C12-0159.²³⁸ These Decisions are not binding,²³⁹ and do not provide persuasive value for the proposition that utility expenditures generally have a rebuttable prudence presumption. Decision No. C12-0159 acknowledges an inapplicable statutory provision that requires a rebuttable prudence presumption in the circumstances of that case; it makes no finding that a rebuttable prudence presumption generally applies to utility expenditures.²⁴⁰ In finding that utility expenditures generally have a rebuttable prudence presumption, Decision No. R20-0144 solely relies on Decision No. C12-0159, which, as noted does not conclude that utility expenditures generally have a rebuttable prudence presumption.²⁴¹ That said, Decision No. R20-0144 continues to hold persuasive value for other conclusions, such as the prudence standard and burdens of proof and moving forward, discussed in ¶¶ 25, 26, 28, and 29.²⁴²

82. This Decision's conclusion that no general rebuttable prudence presumption attaches do not impact the burdens outlined in Section II above. The burden of proof in this Proceeding is neither complicated, nor groundbreaking. In fact, the construct is similar to burdens in civil actions. Indeed, the burden of proving a *prima facie* case for recovery on a civil claim is

²³⁸ Joint SOP at 6, fn. 16.

²³⁹ See *Pub. Serv. Co. of Colo.*, 26 P.3d at 1205.

²⁴⁰ Decision No. C12-0159, ¶¶ 38-39, (acknowledging and explaining rebuttable prudence presumption required by § 40-3.2-205(3), C.R.S.). See *generally*, Decision No. C12-0159.

²⁴¹ Decision No. R20-0144, ¶ 27, fn. 17 (citing and discussing Decision No. C12-0159). The UCA also faults the Company for citing Decision No. R22-0279 to support its description of the burden of proof because that Decision cites Decision Nos. R20-0144 and C12-0159. UCA's SOP at 6-8. Decision No. R22-0279 does not conclude that a utility's expenditures generally have a rebuttable prudence presumption; nor does it apply such a presumption. See *generally* Decision No. R22-0279. Indeed, the words "rebuttable" and "presumption" do not appear anywhere in that Decision. See *generally id.* Because Decision No. R22-0279 does not conclude that utility expenditures have a general rebuttable presumption, it does not rely on Decision Nos. R20-0144 and C12-0159 for that proposition. As a result, UCA's argument fails, and the Decision continues to provide persuasive authority.

²⁴² Notably, while Decision No. R20-0144 states that utility expenditures have a rebuttable prudence presumption, it also separately states that the utility typically meets its burden of proof through the testimony and exhibits filed with its application and finds that the utility in that case met its burden of proof through those filings. Decision No. R20-0144, ¶¶ 27-30. As a result, despite the rebuttable presumption language, the Decision does not appear to apply a rebuttable prudence presumption and instead holds the utility to its burden of proof through its direct-case evidence. *Id.* at ¶¶ 28-30.

on the plaintiff.²⁴³ Once the plaintiff establishes a *prima facie* case, the defendant may produce evidence rebutting plaintiff's *prima facie* case, but the burden of proof or persuasion on the essential elements of the claim remains with the plaintiff.²⁴⁴

b. Cost Recovery and Requested Disallowances

83. Since the ALJ has already found that the Company's direct-case evidence meets the applicable burdens by a preponderance of the evidence, the ALJ considers whether UCA presented sufficient evidence to call into question the prudence of costs at issue, and whether the Company presented sufficient evidence rebutting UCA's prudence challenges.

84. UCA essentially argues that when a utility runs CTs while also curtailing renewable generation or pumping at a hydroelectric plant such as Cabin Creek, it has *de facto* or *per se* imprudently incurred costs because different dispatch would have been less costly.²⁴⁵ The Company debunked this showing in Rebuttal Testimony by establishing that there are numerous ordinary (and not abnormal) circumstances under which it is reasonable (*i.e.*, prudent) to run CTs and either curtail renewable energy or pump at a hydroelectric plant like Cabin Creek.²⁴⁶ UCA agrees that there are circumstances "such as those identified by Mr. Schultz in his Rebuttal Testimony where it may be reasonable to run CTs and either curtail renewable energy or pump Cabin Creek."²⁴⁷ Based on these undisputed facts, the ALJ finds that the preponderance of the evidence establishes that running CTs while curtailing renewable energy or pumping a hydroelectric plant like Cabin Creek does not *de facto* or *per se* result in imprudent costs. Because UCA's arguments and evidence hinge on the false premise that running CTs while curtailing

²⁴³ *W. Distrib. Co.*, 841 P.2d at 1057-1058.

²⁴⁴ *Id.*

²⁴⁵ See Hearing Exhibit 300, 5: 23—6: 1-4; 10: 7-20.

²⁴⁶ See Hearing Exhibit 108, 5: 13-20—6: 1-5; 9: 1-15; 12: 16-21—14: 1-2; 19: 3-21—20: 1-6.

²⁴⁷ Hearing Exhibit 301, 4: 2-8. See also *id.* at 9: 1-5; 10: 8-14.

renewable energy or pumping Cabin Creek is *de facto* or *per se* imprudent, the ALJ finds that the Company's Rebuttal Testimony sufficiently rebuts UCA's prudence challenge.

85. Contrary to UCA's argument, neither the preponderance nor the prudence standards require the Company to provide specific evidence as to each challenged event to overcome UCA's evidence because that evidence rests on the false premise discussed above. To hold otherwise would set an untenable evidentiary standard that would require a utility to produce significant evidence to rebut a speculative evidentiary showing that establishes nothing more than the *potential* for imprudent decision-making. There is always the potential for imprudent decision-making, but that does not mean it is more likely than not that the Company acted imprudently. Indeed, UCA's description that the challenged costs were "potentially imprudent"²⁴⁸ more accurately reflects the reality that UCA's arguments and evidence lack substance and are speculative and superficial.

86. Although the Company's Rebuttal Testimony evidence sufficiently rebuts UCA's prudence challenge, and as a result, carries its burden of proof, the ALJ nonetheless considers the Company's evidence responding to UCA's Surrebuttal Testimony. For the reasons discussed, the ALJ concludes that this additional evidence further supports the ALJ's conclusion that the Company met its burden of proof, including its burden to establish prudence.

87. The Company studied and analyzed the top eight disputed events by dollar amount. The Company did not control which events had the highest potential disallowance amounts, and there has been no suggestion that the Company cherry-picked those events for its analyses to paint an inaccurate picture of its decision-making. The Company relies on experienced, skilled and well-trained NERC-certified operators to correctly evaluate and interpret the significant volume of data

²⁴⁸ See *id.* at 3: 12-15.

before them when making the type of decisions the UCA challenges.²⁴⁹ Its operators are skilled at managing and accessing risks in real-time.²⁵⁰ As explained, Public Service determined that for each of the eight events analyzed, it made prudent dispatch decisions consistent with the circumstances discussed in its Rebuttal Testimony, such as testing, must-run conditions for transmission reliability, the need for reserves, renewable energy volatility, and transmission constraints (among others).²⁵¹ The Company provided extensive supplemental evidence explaining its decisions during the hearing.²⁵² For each of the eight challenged events, the Company's evidence that it acted prudently well surpassed the preponderance of the evidence standard. Indeed, in large part, the Company's evidence on those instances highlights that UCA's claims are much ado about nothing, and that the Commission can rely on the evidence in Rebuttal Testimony that the Company prudently runs CTs while curtailing renewable energy or pumping at a hydroelectric plant like Cabin Creek based on the many regularly occurring circumstances discussed in Rebuttal Testimony. The ALJ finds it particularly persuasive that after performing its own investigation, Staff did not find "any basis" to support a conclusion that the Company imprudently dispatched its system in 2023, and that it satisfactorily explained the reasons and circumstances leading to its dispatch decisions.²⁵³ For all these reasons, and based on the record as a whole, the ALJ infers from the detailed evidence on the 8 challenged events, the Company's Rebuttal Testimony, and Staff's prudence investigation and resulting conclusion that the Company acted prudently as to the remaining 82 events at issue.²⁵⁴ As such, the ALJ finds that the preponderance of the evidence

²⁴⁹ 1/9/25 Pub. Tr., 216: 20-25—217: 25-1-2; 232: 19-21.

²⁵⁰ *Id.* at 230: 13-15.

²⁵¹ See Hearing Exhibit 301, Attachment CN-6HC at 1-4; Hearing Exhibit 108, 9: 1-15; 19: 1-21; 1/9/25 HC Tr., 91: 18-25—93: 1; 93: 3-25—97: 1-6; 97: 9-25—99: 19-23; 100: 8-25—101: 1-11; 107: 15-25—109: 1-4. See *supra*, ¶¶ 70-75. See also Hearing Exhibit 301HC, 8: 18-21—10: 1-23; 11: 6-22—13: 1-12.

²⁵² See *supra*, ¶¶ 72-75.

²⁵³ 1/9/25 Pub. Tr., 246: 14-21.

²⁵⁴ See *supra*, ¶¶ 70-75; 79.

establishes that the Company prudently incurred the disputed costs and that the Company met its burdens.

88. Allowing Public Service to recover its prudently incurred cost of service helps ensure its continued operational viability for the purpose of serving the public, and therefore, is consistent with the public interest.²⁵⁵ For the reasons and authorities discussed, the ALJ rejects UCA's proposed disallowances and approves the Company's request to recover the costs at issue, consistent with the Settlement Agreement.

D. Additional Reporting Requirements

89. The ALJ informed the parties during the hearing that she is considering imposing requirements for the Company to report the type of information that was the subject of the Motions to Compel (*i.e.*, information relating to reasons the Company ran CTs while curtailing or pumping at a hydroelectric plant like Cabin Creek).²⁵⁶

1. UCA's Position

90. UCA argues that the Commission should require the Company to report on a periodic basis instances where it simultaneously runs CTs while curtailing renewable generation or pumping at Cabin Creek.²⁵⁷ UCA submits that the reports should identify each instance when its operators were dispatching CTs and/or Plains End and also curtailing renewable generation or injecting power into storage at either Cabin Creek or into batteries and provide justification for its actions.²⁵⁸ UCA suggests that operators record the data in real time.²⁵⁹ UCA submits that this periodic report should be consolidated into an annual report at the end of the year to be filed with

²⁵⁵ See *CF&I Steel, L.P.*, 949 P.2d at 584.

²⁵⁶ 1/10/25 Tr., 34: 17-25—35: 1-6.

²⁵⁷ UCA's SOP at 29.

²⁵⁸ *Id.*

²⁵⁹ See *id.* ("operators can be advised of this requirement and proactively report such information . . .").

the annual ECA filing.²⁶⁰ UCA argues that by filing reports on a periodic basis, the Company will not have to justify its activities retroactively.²⁶¹

2. Settling Parties' Position

91. Public Service asserts that additional reporting is unnecessary because it already performs extensive reporting in annual ECA and PCCA prudence review proceedings, quarterly ECA filings, and during ECA stakeholder meetings (as required by past settlement agreements.).²⁶² In its annual ECA and PCCA prudence review filings, the Company provides, among other things, the following systems operations data: hourly datasets providing load, resources, purchases, and sales; must-run information; outages; costs; curtailments, including levels and costs for both Company-owned and PPA units; unit availability and GADS data; and information relating to WEIS participation and its costs and benefits.²⁶³ Public Service also provides stakeholders (including Staff and UCA) system operations data and reporting in quarterly ECA filings and other recurring reports, such as unit-level details relating to both dispatchable and non-dispatchable resources; data on Comanche 3 outages; system supply reports; wholesale sales; market sales; and short-term market purchase volumes.²⁶⁴ During its quarterly stakeholder meetings on its generation fleet operation, the Company covers curtailment protocols and other relevant operational topics.²⁶⁵

92. Public Service submits that this voluminous data provides the Commission and stakeholders with a broad and in-depth look in the Company's system operations throughout the year.²⁶⁶ The Company explains that additional reporting and the overall outgrowth of annual ECA

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² Joint SOP at 28, citing Hearing Exhibit 101, 11: 15-21—20: 1-9.

²⁶³ *Id.*

²⁶⁴ *Id.* at 28-29, citing Hearing Exhibit 101, 18: 1-18—19: 1-10.

²⁶⁵ *Id.*, citing Hearing Exhibit 101, 19: 11-12.

²⁶⁶ *Id.* at 29.

and PCCA prudence proceedings are not without cost. It expends increasing amounts of resources to prepare and litigate its annual ECA and PCCA proceedings and to report data throughout the year and in quarterly ECA stakeholder meetings.²⁶⁷ Public Service asks the Commission to consider the added regulatory burden that UCA's proposed additional reporting would impose.²⁶⁸

93. As to that burden, the Company explains that UCA's proposed reporting would require it to perform analyses substantially similar to the detailed reconstruction of events that UCA sought in discovery (at issue in the Motions to Compel).²⁶⁹ This type of reporting would likely require hundreds of hours of work; is not practical; and would represent a substantial increase in the time required to prepare each annual filing.²⁷⁰ Public Service argues that unless such additional reporting is tailored to actual need and relevance, it may result in an improper focus on the events highlighted by UCA despite the fact that such events do not demonstrate imprudent system operations.²⁷¹

94. If the Commission decides that additional reporting is warranted, the Settling Parties suggest that the Company include in its hourly generation and curtailment data an additional column to indicate for each hour of the year, whether there was a WEIS curtailment instruction for any generation units, starting with its 2024 Prudence Review.²⁷² Such information would allow interveners and the Commission to evaluate the extent of WEIS-instructed curtailments for that year and, where there are questions about the Company's actions during a particular event, to understand whether WEIS curtailment instructions impacted how the system

²⁶⁷ *Id.*

²⁶⁸ *Id.*, citing 1/9/25 Pub. Tr. 247: 7-25—249: 1-3.

²⁶⁹ *Id.*

²⁷⁰ *Id.*, citing 1/9/25 Pub. Tr., 230: 20-25—231: 1-23; Affidavit of Mark G. Schultz at ¶¶ 4-13, filed with the Company's Combined Response.

²⁷¹ *Id.* at 29-30.

²⁷² *Id.* at 31.

was dispatched.²⁷³ This reporting would continue as long as Public Service remains a WEIS member.²⁷⁴ The Company also offers to include a narrative discussion in direct testimony that explains how the Company receives and processes WEIS curtailment instructions; describes its obligations to follow those instructions and consequences of failing to do so; and explains circumstances under which the Company may manually redispach the system for reliability.²⁷⁵ This narrative is intended to elaborate on the points that Company witness Mr. Schultz discussed during the hearing. The Company submits that this additional reporting strikes the appropriate balance between the need for transparency and the regulatory burden on the Company and would provide more valuable information than the reporting UCA suggests.²⁷⁶

3. Findings, Analysis, and Conclusions

95. For the reasons discussed, the ALJ finds that some additional reporting is warranted. Appropriate reporting requirements balance the Commission's need for information with the costs and resources required to provide that information (*i.e.*, the burden to produce the information), and utilities' obligation to serve customers reliably.²⁷⁷ Indeed, ratepayers may

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 32.

²⁷⁶ *Id.* at 31-32.

²⁷⁷ This principle finds indirect support in Decision Nos. C23-0481 (issued July 26, 2023) in Proceeding No. 21A-0166E ("Decision No. C23-0481"); R20-0754 (issued October 29, 2020) in Proceeding No. 20AL-0301E ("Decision No. R20-0754"); and C22-0760 (issued December 1, 2022) in Proceeding No. 21R-0449G ("Decision No. C22-0760"). In Decision No. C22-0760, the Commission balanced regulatory oversight with the administrative burden on utilities and utilities' obligation to serve customers reliably in considering Rule changes. *See* Decision No. C22-0760 at ¶¶ 73-74. In Decision No. C23-0481, after concluding that the utility's stakeholder outreach did little to resolve issues identified in a prior decision, the Commission found that it "must balance need to resolve these issues with the administrative burden their resolution places on [the utility] and the costs of that burden, which are ultimately paid by [the utility's] ratepayers." Decision No. C23-0481 at ¶ 8. In Decision No. R20-0754, the Commission found that it should strive to avoid circumstances under which a utility's legal costs are needlessly increased since ratepayers pay such costs. Decision No. R20-0754 ¶ 97.

ultimately bear the costs to comply with such requirements.²⁷⁸ This makes it important to focus reporting requirements on data whose value to the Commission is proportionate to the burden to produce the data.

96. UCA's proposed reporting would require the Company to report on the overall operational backdrop that operators faced when making dispatch decisions, which is a significant volume of data that spans each hour relevant to these decisions and can cover longer periods.²⁷⁹ For example, this may include information about load; real-time and forecasted renewable output; which generation units were online and how they were being dispatched; constraints or limits concerning such generation units (*e.g.*, flexibility, base-load); the need for reserves; the daily unit commitment plan; other resource availability information; GADS data; and testing and transmission limitations impacting dispatch, among other relevant data.²⁸⁰ Company operators potentially consider hundreds or thousands of datapoints in real time, many of which evolve.²⁸¹ Even so, certain aspects of dispatch can only be captured by "literally, sitting in the chair, being faced with a continuous stream of data . . . that is coming in from the field" and "is constantly changing."²⁸² The Company explained that the "operator's challenge is to identify those trends, and determine not just where the system is at that moment in time, but where the system will be in 20 minutes, once CT is started, or in an hour or two more hours from now."²⁸³ There are often

²⁷⁸ See *e.g.*, Decision No. C22-0760 ¶ 74 (costs to comply with regulations may ultimately fall on ratepayers); Decision No. R20-0094-I ¶ 42 (issued February 12, 2020) in Proceeding No. 19A-0660E (utility litigation costs before the Commission, even those with no benefit to ratepayers, are still passed onto ratepayers); Decision Nos. C23-0481 at ¶ 8; R20-0754 ¶ 97; Decision No. R14-1298 at ¶ 292 (issued October 28, 2014) in Proceeding No. 14AL-0393E (allowing utility to recover actual rate case expenses); Decision No. R15-1204 at ¶ 242 (issued November 16, 2015) in Proceeding No. 15AL-0135G (allowing utility to recover actual rate case expenses, noting that Commission "typically allows such recovery . . .").

²⁷⁹ See 1/9/25 Pub. Tr., 213: 13-19; 215: 8-14.

²⁸⁰ See *id.* at 213: 20-25—214: 1-3; 214: 13-16; 214: 22-25—215: 1-7.

²⁸¹ *Id.* at 145: 10-13. See *id.* at 215: 8-25—216: 1-9.

²⁸² See *id.* at 215: 19-25.

²⁸³ See *id.* at 216: 1-5.

multiple reasons for any specific dispatch decision, which further compounds the difficulty with recording the reasons for dispatch decisions.²⁸⁴ The Company's efforts to reconstruct eight of the events at issue elucidates the difficulty associated with attempting to peer into operators' minds. Indeed, the Company witness who analyzed the eight instances explained that in performing that review, he could not put himself "in the shoes of the operator, who is getting all of that information in the moment, which includes four-second analysis from EMS, about what the regulation needs are, what renewable output is . . . [t]here is far more information flowing through to the operator every minute of every operating day than could be provided in that spreadsheet."²⁸⁵ The Company's analyses of those eight events was its attempt to distill the thousands of data points that operators may have considered down to the information that would help the parties understand why the decisions were made for each hour at issue.²⁸⁶ Despite the Company's best efforts, its written analyses of those eight events did not capture all the information relevant to those decisions. Indeed, the Company provided extensive additional testimony during the hearing sharing the additional relevant information it discovered about many of those eight events, explaining that each individual event is complex and requires a thorough review of not just the units in question, but of hours and dispatch taking place at other units in adjacent periods.²⁸⁷ In short, such reporting would require the Company to identify a reasonable approach to peer into operators' minds to capture all the information—potentially thousands of data points—that fed into each of the hundreds of decisions that operators make during each shift.²⁸⁸ The Company has yet to find a way to do this, or present the resulting comprehensive data in a useful format and in context.²⁸⁹

²⁸⁴ *See id.* at 230: 7-13.

²⁸⁵ *Id.* at 145: 17-25.

²⁸⁶ *Id.* at 145: 25—146: 1-4.

²⁸⁷ *Id.* at 80: 3-21.

²⁸⁸ *See id.* at 219: 19-23.

²⁸⁹ *See id.* at 219: 7-10; 219: 23-25.

97. UCA suggests that operators record the data.²⁹⁰ Assuming *arguendo* that UCA's suggested reporting is feasible and can be provided in a usable format, the ALJ concludes that the preponderance of the evidence establishes that requiring operators to record potentially thousands of data points relevant to their decisions simultaneously or contemporaneously may detract from operators' critical function to make those decisions, which help ensure system integrity and reliability.²⁹¹ For the reasons discussed, the ALJ finds that UCA's suggested reporting may not serve the public interest as it fails to balance the Commission's need for the information with the Company's obligation to reliably serve customers.²⁹²

98. There are other practical issues with UCA's suggested reporting. For example, the timeframe in which coincidental curtailment or pumping at a hydroelectric plant while running CTs can be very brief or last much longer.²⁹³ Because operators make decisions based on current information coming to them live, it will not always be apparent when the decision is made how long coincidental curtailment or pumping while running CTs will last. This presents additional practical challenges for operators to capture and record the relevant information as decisions are made. And, since operators potentially consider thousands of data points in making dispatch decisions, the ALJ has serious concerns as to whether it is even feasible for them to record that information simultaneously, contemporaneously, or after the fact.

99. As discussed in detail, the evidence fails to establish that running CTs while curtailing renewable resources or pumping at a hydroelectric plant like Cabin Creek is *de facto* or

²⁹⁰ See UCA's SOP at 29.

²⁹¹ Based on the evidence that operators make dispatch decisions based on hundreds, if not thousands of data points that come in every hour, the ALJ infers that requiring operators to simultaneously or contemporaneously record each factor that played into their dispatch decisions may detract from their critical function to make those decisions. 1/9/25 Pub. Tr., 145: 10-22.

²⁹² See *e.g.*, Decision No. C22-0760 at ¶ 73.

²⁹³ See *e.g.*, 1/9/25 HC Tr., 91: 18-25—92: 1-15. See also Hearing Exhibit 301, Attachment CN-6HC.

per se imprudent. While such decisions may superficially appear questionable, this does not warrant the significant costs that would be passed on to ratepayers to report the type of detailed information that UCA suggests. Nor does it justify detracting operators from performing their critical functions. For the reasons discussed, the ALJ rejects UCA's suggested reporting requirements.

100. The Settling Parties' proposed reporting presents a far more reasonable option. Reporting on curtailments resulting from WEIS directives would be a discrete and straightforward exercise that the Company can accomplish without expending significant resources or inappropriately detracting operators from performing their critical functions. Such reporting may minimize disputes concerning certain curtailments and provide the Commission and stakeholders a better understanding of how the Company's WEIS membership impacts its dispatch decision-making, which may be helpful in numerous contexts, including future ECA prudence reviews. The relatively low burden to gather and provide such information is proportionate to the need for the information. For all these reasons, the ALJ finds that the Settling Parties' proposed reporting is an appropriate and reasonable middle ground to address at least some of UCA's concerns about the Company's system operations. For the reasons and authorities discussed, the ALJ finds that the preponderance of the evidence warrants additional reporting, and that the Settling Parties' proposed reporting strikes the appropriate balance and is in the public interest. As such, the ALJ orders additional reporting consistent with the Settling Parties' suggestions.

IV. CONCLUSIONS

101. For the reasons and authorities discussed, the ALJ finds that the preponderance of the evidence establishes that the Settlement Agreement reflects a just and reasonable compromise between the Setting Parties to resolve all issues that have been or could have been raised here; is

in the public interest; and is just, reasonable, and not discriminatory. As such, the ALJ approves the Settlement Agreement, as modified above, and grants the Application as modified by the Settlement Agreement and this Decision. This Decision's additional reporting requirements strike an appropriate balance between the Commission's need for the information, the burden to produce such information, and the Company's obligation to reliably serve customers.

102. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this Proceeding along with this Decision and recommends that the Commission enter the following order.

V. ORDER

A. The Commission Orders That:

1. The Unopposed Joint Motion for Approval of Unanimous and Comprehensive Settlement Agreement and Waiver of Response Time filed August 20, 2024 is granted in part consistent with the above discussion.

2. The Non-Unanimous Comprehensive Settlement Agreement filed on December 6, 2024 ("Settlement Agreement" or "Agreement") is approved with a modification requiring additional reporting consistent with the above discussion.

3. Public Service Company of Colorado's ("Public Service") above-captioned Application, as modified by the Agreement and this Decision is granted and approved.

4. The Settlement Agreement is included with this Decision as Appendix A.

5. Proceeding No. 24A-0327E is closed.

6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

7. 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.

8. 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)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge