

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

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IN THE MATTER OF THE)
APPLICATION OF PUBLIC SERVICE)
COMPANY OF COLORADO FOR)
APPROVAL OF ITS COMMUNITY)
RESILIENCY INITIATIVE PURSUANT)
TO § 40-2-203(4), C.R.S.)

PROCEEDING NO. 19A-0225E

**UNOPPOSED JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT AND
REQUEST FOR WAIVER OF RESPONSE TIME**

Public Service Company of Colorado (“Public Service” or the “Company”), on behalf of itself, Trial Staff of the Colorado Public Utilities Commission (“Staff”), the Colorado Office of Consumer Counsel (“OCC”), Rocky Mountain Environmental Labor Coalition and Colorado Building and Construction Trades Council, AFL-CIO (jointly, “RMELC/CBCTC”), and Western Resource Advocates (“WRA”) (collectively the “Settling Parties”), requests that the Colorado Public Utilities Commission (“Commission”) approve the Unopposed and Unanimous Settlement Agreement (“Settlement Agreement”) included with this Unopposed Motion as Attachment 1. Public Service further requests that the Commission waive response time to this Motion pursuant to Rule 1308(c), because it is unopposed.

All the Settling Parties have entered into the above-described Settlement Agreement with the intent of resolving between them all issues that have been raised, or could have been raised, in this proceeding. The Settling Parties therefore agree that the compromises reflected in the Settlement Agreement represent a just and reasonable resolution of this proceeding, and that reaching this Settlement Agreement

by means of a negotiated settlement is in the public interest. Each of the Settling Parties has pledged its support for the Agreement, and has agreed to defend the settlement reached. The Settling Parties request that the Commission approve the Settlement Agreement without modification.

I. STATEMENT REGARDING CONFERRAL

1. Pursuant to Rule 1400(a), the undersigned certifies that the Settling Parties have conferred with all parties to this proceeding about this Motion, and that the Settling Parties all support the Motion (given that the Settlement Agreement is unanimous). The Settling Parties have also conferred on and agree to waiving response time to this Motion.

II. BACKGROUND

2. In 2018, Colorado's General Assembly enacted the Energy Storage Procurement Act ("HB 18-1270").¹ In addition to finding it in the public interest to explore the use and procurement of energy storage systems in Colorado,² HB 18-1270 authorized investor-owned electric utilities, including Public Service, to file applications for rate-based energy storage system projects up to 15 megawatts ("MW") of capacity on or before May 1, 2019.³

3. On May 1, 2019, Public Service timely filed a Verified Application and the supporting Direct Testimony of three witnesses requesting approval of its proposed Community Resiliency Initiative ("CRI" or "Initiative"). The Initiative sought to fulfill the intent of HB 18-1270 through targeted, community-based microgrid projects designed to enhance the Company's resource diversity as well as the safety, reliability, and

¹ § 40-2-201 *et seq.*, C.R.S.

² § 40-2-201(1)(b), C.R.S.

³ § 40-2-203(4), C.R.S.

resiliency of its electric grid. The CRI also proposed a collaborative partnership through the use of Project Labor Agreements with CBCTC for construction of the energy storage projects selected as part of the Initiative.

4. Contemporaneously with its Application, the Company also filed a Motion seeking leave to file Supplemental Direct Testimony on or before December 16, 2019, to allow it time to conduct a competitive solicitation and subsequently supplement the record with additional information regarding the selected CRI projects. The Commission granted the Company's Motion on June 12, 2019 by Decision No. C19-0499-I. CRI project applications were accepted from prospective community partners between May 31, 2019 and June 28, 2019. Following its evaluation of the submitted project applications and in accordance with Decision No. C19-0499-I, Public Service filed the Supplemental Direct Testimony of two witnesses on December 16, 2019, in which it presented the seven projects (totaling approximately 6 MW) to be part of the Initiative.

5. The Commission noticed the Company's Application on December 18, 2019, setting the intervention deadline to January 17, 2020. Staff, OCC, WRA, and RMELC/CBCTC subsequently filed interventions. At the Commissioners' Weekly Meeting on January 29, 2020, the proceeding was referred to an Administrative Law Judge ("ALJ") by minute entry. On February 6, 2020, the ALJ issued Decision No. R20-0081-I, which acknowledged the interventions of right filed by Staff and OCC and granted the requests for intervention filed by WRA and RMELC/CBCTC.

6. By Decision No. R20-0100-I, the ALJ established a procedural schedule, which included the following dates and deadlines: Filing of Answer Testimony by April 27, 2020; filing of Rebuttal and Cross-Answer Testimony by May 29, 2020; filing of

prehearing motions by June 2, 2020; filing of stipulations and/or settlement agreements by June 9, 2020; an evidentiary hearing on June 23-25, 2020; and filing of statements of position by July 15, 2020.

7. The Settling Parties commenced settlement negotiations on April 15, 2020 and ultimately reached a settlement in principle. Responding to a previous Unopposed Motion by Public Service, the ALJ issued Decision No. R20-0307-I on April 27, 2020. That Interim Decision vacated the deadlines in the adopted procedural schedule, modified the date for filing written settlement agreements to require the filing of a written Settlement Agreement by May 1, 2020 and any testimony in support of the Settlement Agreement by May 8, 2020, and scheduled a hearing on the written Settlement Agreement for June 23, 2020.

8. The Settlement Agreement filed here represents the comprehensive agreements of all Settling Parties to resolve the issues in this Proceeding No. 19A-0225E that were raised, or could have been raised, by the Settling Parties. The Settling Parties agree that the Settlement Agreement is in the public interest.

III. SUMMARY OF THE SETTLEMENT AGREEMENT

9. The Settlement Agreement resolves all issues in this proceeding between the Settling Parties. The discussion below briefly summarizes key issues included in the Settlement Agreement. The purpose of this summary is to address the main topics of the Settlement Agreement. It should not be treated as either a comprehensive summary of, or a replacement for, any of the provisions in the Settlement Agreement itself.

10. First, the Settlement Agreement provides for the approval of the Company's proposed CRI, which consists of seven discrete projects totaling approximately six MW and 15 megawatt-hours ("MWh") of rate-based energy storage system projects pursuant to § 40-2-203(4), C.R.S. Per the Settlement Agreement, the projects will utilize a Project Labor Agreement consistent with the Company's Application and direct case.⁴

11. Second, the Settlement Agreement concludes that the Company has presented detailed cost information regarding the capital, operation and maintenance ("O&M"), and other costs, for each Company-owned energy storage system proposed to be developed pursuant to the Initiative—and that the project capital costs incurred for the seven CRI projects should be entitled to a rebuttable presumption of prudence. If one or more of the seven projects is not started, then the dollar value for that or those project(s) will not carry the rebuttable presumption of prudence; however, some capital investments and O&M expenditures are common to more than a single project. The Settling Parties are free to challenge the prudence of the capital expenditures in order to overcome the rebuttable presumption of prudence. The Settling Parties also agree that no follow-on Certificates for Public Convenience and Necessity need to be filed for the CRI projects.

12. Third, the Settlement Agreement outlines a reporting schedule detailing the timing and contents of: (1) an Initial Report; (2) a series of Semi-Annual Reports, including reporting on construction and operations; and (3) a Final Comprehensive Report, which will in part summarize the periodic reports and all entire engineering,

⁴ For enumeration of the specific sites, please see Attachment 1 at 4.

procurement, construction, commissioning, and operational activities two years after the last project achieves commercial operation.

13. Fourth and finally, the Settlement Agreement provides for an approach around Emergency Response Plans for each of the projects, with Public Service making the necessary filings within 120 days of a final decision in this proceeding.

IV. REQUEST FOR APPROVAL OF THE SETTLEMENT AGREEMENT

14. The Settlement Agreement resolves all issues in this proceeding between the Settling Parties. It represents a broad set of interests coming together to resolve issues that would otherwise require full litigation during a time where social distancing is a public health concern. Pursuant to Rule 1408, “[t]he Commission encourages settlement of contested proceedings.”⁵ The Settlement Agreement is consistent with this Commission directive. Accordingly, the Settling Parties request that it be approved, consistent with the public interest.

15. Public Service will file testimony in support of the Settlement Agreement by May 8, 2020, and other Settling Parties may wish to do the same. To the extent the ALJ has further questions regarding the Settlement Agreement after reviewing the Settlement Agreement and the supporting testimony, the Settling Parties are open to an approach where—in lieu of a hearing—the ALJ poses questions to the Settling Parties that may be addressed in writing. The Settling Parties support any path that can lead to approval of the Settlement Agreement in a timely manner.

⁵ 4 CCR 723-1-1408.

V. REQUEST FOR WAIVER OF RESPONSE TIME

16. As noted above, this Motion is unopposed. Therefore, pursuant to Rule 1308(c), the Company respectfully requests that the Commission waive response time to this Unopposed Motion.

VI. REQUEST FOR RELIEF

WHEREFORE, the Settling Parties respectfully request the Commission issue an order approving, without modification, the Settlement Agreement attached to this Unopposed Motion as Attachment 1. The Settling Parties further request that the ALJ waive response time to this Unopposed Motion.

Dated this 1st day of May, 2020.

Respectfully submitted,

By: /s/ Christopher M. Irby
Christopher M. Irby, #35778
Assistant General Counsel
Xcel Energy Services, Inc.
1800 Larimer Street, Suite 1100
Denver, CO 80202
Telephone: 303.294.2556
Fax: 303.294.2988
E-mail: christopher.m.irby@xcelenergy.com

and

Matthew S. Larson, #41305
Ethan D. Jeans, #49057
Wilkinson Barker Knauer LLP
1755 Blake Street, Suite 470
Denver, CO 80202
Telephone: 303.626.2350
Fax: 303.626.2351
E-mail: mlarson@wbklaw.com
ejeans@wbklaw.com

**ATTORNEYS FOR PUBLIC SERVICE
COMPANY OF COLORADO**