

**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) PROCEEDING NO. 19A-0225E
APPROVAL OF ITS COMMUNITY)
RESILIENCY INITIATIVE PURSUANT)
TO § 40-2-203(4), C.R.S.)

UNOPPOSED AND UNANIMOUS COMPREHENSIVE SETTLEMENT AGREEMENT

Introduction and Identification of Parties

Public Service Company of Colorado (“Public Service” or the “Company”), 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”), hereby enter into this unopposed and unanimous comprehensive Settlement Agreement (“Agreement”) to resolve all issues that have been raised in this proceeding.

Background

In 2018, the General Assembly enacted the Energy Storage Procurement Act (“HB 18-1270,” codified at § 40-2-201, *et seq.*, C.R.S.) In addition to finding it in the public interest to explore the use and procurement of energy storage systems in Colorado,¹ HB 18-1270 allowed investor-owned electric utilities to file applications for rate-based energy

¹ § 40-2-201(1)(b), C.R.S.

storage system projects up to 15 megawatts (“MW”) of capacity on or before May 1, 2019.²

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 resiliency of its electric grid. The Company’s 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.

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.

The Commission noticed the Company’s Application on December 18, 2019, setting the intervention deadline to January 17, 2020, and Staff, OCC, WRA, and

² § 40-2-203(4), C.R.S.

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.

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.

The Settling Parties commenced settlement negotiations on April 15, 2020 and ultimately reached a settlement in principle. The 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.

Settlement Terms

I. Approval of the Seven CRI Projects

The Settling Parties agree that, pursuant to § 40-2-203(4), C.R.S., the Commission should approve the Company’s proposed Community Resiliency Initiative, 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. The seven projects relate to or would be developed at the following sites:

- The Denver International Airport Automated Guideway Transit System;

- The National Western Center;
- The Denver Rescue Mission Lawrence Street Community Center;
- The City of Arvada Center for the Arts and Humanities;
- The Town of Nederland Community Center;
- Summit County Middle School; and
- The Alamosa Family Recreation Center.

The projects will utilize a Project Labor Agreement consistent with the Company's Application and direct case.

II. Approval of Cost Recovery for CRI Projects

The Settling Parties agree 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. Therefore, the project capital costs incurred for the seven CRI projects shall be entitled to a rebuttable presumption of prudence when these projects are brought forward for recovery in a rate case or by application for recovery through an appropriate cost recovery mechanism.

When Public Service proposes to recover these project costs through base rates or an appropriate cost recovery mechanism, the Company bears the burden of going forward and shall present robust testimony with appropriate accompanying exhibits to justify the expenditures: (1) at or below the amounts set forth in Updated Table CAG-SD-3; and (2) if applicable, amounts in excess of the amounts set forth in Updated Table

CAG-SD-3.³ The costs in Updated Table CAG-SD-3 are not materially different than the costs in Table CAG-SD-3 provided with the Supplemental Direct Testimony of Mr. Charles A. Gouin, provided that the figures are rounded to the nearest thousand and the table separately reflects the contingency amounts, consistent with a request by the Settling Parties.

Updated Table CSG-SD-3

Cost Category	Denver International Airport	National Western Center	Denver Rescue Mission	Alamosa Recreation Center	Arvada Center	Nederland Community Center	Summit Middle School	Total Costs
Medium Voltage Work, site prep, etc.	\$ 1,326,000	\$ 1,313,000	\$ 555,000	\$ 970,000	\$ 1,058,000	\$ 945,000	\$ 1,006,000	\$ 7,173,000
Battery Energy Storage System (BESS)	\$ 3,146,000	\$ 3,146,000	\$ 197,000	\$ 543,000	\$ 2,173,000	\$ 543,000	\$ 724,000	\$ 10,472,000
Systems Integration	\$ 520,000	\$ 520,000	\$ 520,000	\$ 520,000	\$ 520,000	\$ 520,000	\$ 520,000	\$ 3,640,000
Contingency	\$ 499,000	\$ 498,000	\$ 127,000	\$ 203,000	\$ 375,000	\$ 201,000	\$ 225,000	\$ 2,128,000
Total Capital Cost	\$ 5,491,000	\$ 5,477,000	\$ 1,399,000	\$ 2,236,000	\$ 4,126,000	\$ 2,209,000	\$ 2,475,000	\$ 23,413,000
Annual O&M	\$ 32,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 152,000

If one or more of the seven projects is not started, then the dollar value for that project(s) will not carry the rebuttable presumption of prudence, provided, however, that 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

³ This provision is similar to the approach used in Proceeding No. 16A-0588E for certain expenditures with a rebuttable presumption of prudence under the Company’s Advanced Grid Intelligence and Security Initiative (“AGIS”). See, e.g., Decision No. C17-0556, at ¶¶ 35-36, Proceeding No. 16A-0588E (mailed July 25, 2017) (providing in part: “We clarify that paragraph II.D.4. of the Settlement Agreement, ‘Transferring IVVO Costs to Rate Base,’ imposes on Public Service the burden of going forward and also requires Public Service, when proposing to include IVVO and associated infrastructure costs in base rates, to present robust testimony with appropriate accompanying exhibits to justify any expenditures: (1) in the base amounts set forth in Table 1 of the Settlement Agreement; and (2) any amounts in excess of the base amount. Although the Company will enter into that proceeding with a general rebuttable presumption of prudence regarding its expenditures, the Company has the burden of going forward. Each one of the parties is free to challenge the prudence of the expenditures in order to overcome the rebuttable presumption of prudence.”) With the language in this provision of the Settlement Agreement, the Settling Parties intend to utilize this same approach as reflected in the decision approving the Settlement Agreement in Proceeding No. 16A-0588E.

Parties also agree that Public Service is not seeking deferred accounting or the establishment of a regulatory asset for O&M expenses in this proceeding.

Finally, the Settling Parties agree that no follow-on Certificates for Public Convenience and Necessity (“CPCNs”) need to be filed for the CRI projects.

III. Reporting

The Settling Parties agree that the Company shall report on the construction and operation of the CRI projects as described below.

A. Reporting Schedule

The Company shall file reports in this proceeding every six months, with the first report due December 15, 2020, and the following reports due every June 15 and December 15 until the Final Comprehensive Report is due. The following schedule is an example of the reporting schedule under this Settlement Agreement:

- December 15, 2020 → Initial Report
- June 15, 2021 → Semi-Annual Report
- December 15, 2021 → Semi-Annual Report
- June 15, 2022 → Semi-Annual Report
- December 15, 2022 → Semi-Annual Report
- June 15, 2023 → Semi-Annual Report
- December 15, 2023 → Semi-Annual Report
- April 30, 2024 → Final Comprehensive Report⁴

⁴ These dates assume that the last project to be completed has a Commercial Operation Date of April 30, 2022 and are provided for illustrative purposes only. The deadline for filing for the Final Comprehensive Report shall be two (2) years after the last project achieves commercial operation.

The Settlement Agreement describes in more detail the contents of the Initial Report, the Semi-Annual Reports, and the Final Comprehensive Report below.

B. Initial Report

The Company shall file an Initial Report in this proceeding addressing: (1) the status of all agreements executed in support of the CRI projects, including agreements with each entity hosting a CRI project; and (2) agreements with all contractors, vendors, equipment suppliers, and system integrators, for services or equipment associated with each of the CRI projects.⁵ The Initial Report should include a status report on the Project Labor Agreements for the seven projects.

C. Semi-Annual Report

The Semi-Annual Reports shall contain the following two (2) sections: (1) a Construction Report Section and (2) an Operations Report Section. These sections will not be required in the Initial Report or the Final Comprehensive Report.

i. Construction Report Section

The Construction Report Section of each Semi-Annual Report will provide the following information for all projects from initiating construction until the project achieves commercial operation, establishing the Commercial Operation Date (“COD”):

- A status report update on the Project Labor Agreements for the seven projects.
- Major accomplishments and hurdles for each project, including a discussion of any issues causing significant departure from project plans, planned schedules or material deviations in expenditures.

⁵ The Settling Parties agree that the Company may need to utilize confidential and highly confidential designations for some of these items.

- Project schedule, status, and milestones achieved. Milestones would include construction timelines, safety training, and in-service dates. The narrative would include a description of various developments associated with the project, noting that each of the seven projects is anticipated to be on a different timeline.
- An update on expenditures to date as compared to budgeted amounts for each of the seven projects. The Company anticipates that these costs may be shown publicly at a higher level of aggregation and potentially also in a confidential form with additional cost detail.

ii. Operations Report Section

The Operations Report Section of the Semi-Annual Report will include information on the following, to the extent practicable, for all projects that have achieved commercial operation:

- Number and duration of islanding events for each project.
- Battery state of charge at the time of islanding events.
- Use of on-site renewable and non-renewable generation during islanding events.
- Summary of any unplanned outages, technical failures or maintenance issues.
- Summary of how batteries were dispatched over the course of the year, including dispatch for arbitrage, system peak, and feeder peak (presented using a table form of arbitrage), and associated non-quantifiable benefits realized from dispatch.

- Summary of monetary benefits and emission reductions related to the projects to the extent such data can reasonably be isolated to the projects collectively or individually.
- Summary of interactions and feedback from host communities the projects are serving.
- Lessons learned from the operations of the CRI projects to date.

D. Final Comprehensive Report

The Settling Parties agree that Public Service shall file a Final Comprehensive Report summarizing the periodic reports and the entire engineering, procurement, construction, commissioning, and operational activities two (2) years after the last project achieves commercial operation. The Final Comprehensive Report will also include a summary of lessons learned from the commercial operation to date of the projects, including how the projects and lessons learned relate to other energy storage-related initiatives the Company is participating in or has participated in. The Final Comprehensive Report will identify preferred characteristics and purposes of microgrid projects, based on the Company's experience with the projects covered by this Settlement Agreement. Public Service shall provide a draft copy of the Final Comprehensive Report to the Settling Parties 30 days in advance of the filing date for the purpose of collecting comments prior to finalization and filing. This Final Comprehensive Report will include the results of a survey of partner customers on their perception of battery performance and microgrid project benefits and a summary of host community interactions and feedback.

IV. Emergency Response Plans

The Settling Parties agree that, in recognition of the fact that the Commission has the duty pursuant to § 40-4-101(1), C.R.S., to ensure that the practices, equipment, and facilities of public utilities are safe, proper, and adequate, Public Service shall file within 120 days of a final decision in this proceeding its, or if appropriate and to the extent available, that of the applicable municipality or other authority having jurisdiction, emergency response plans for each of the seven projects in the event of a leak, spill, fire, explosion, or any other threat to the safety of the general public and the safety of those that may occasionally need to access the facilities to conduct normal operation, maintenance, or emergency response activities in accordance with currently accepted engineering practices and industry standards.

GENERAL PROVISIONS

1. This Agreement is made for settlement purposes only. No Settling Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Agreement. Furthermore, this Agreement does not constitute agreement, by any Settling Party, that any principle or methodology contained within or used to reach this Agreement may be applied to any situation other than the above-captioned proceeding, except as expressly set forth herein. No binding precedential effect or other significance, except as may be necessary to enforce this Agreement or a Commission order concerning the Agreement, shall attach to any principle or methodology contained in or used to reach this Agreement, except as expressly set forth herein.

2. Each Settling Party understands and agrees that this Agreement represents a negotiated resolution of all issues the Settling Party either raised or could have raised in this proceeding. The Settling Parties agree this Agreement, as well as the negotiation process undertaken to reach this Agreement, are just, reasonable, and consistent with and not contrary to the public interest and should be approved and authorized by the Commission.

3. The discussions among the Settling Parties that produced this Agreement have been conducted in accordance with Rule 408 of the Colorado Rules of Evidence ("CRE").

4. Nothing in this Agreement shall constitute a waiver by any Settling Party with respect to any matter not specifically addressed in this Agreement. In the event this Agreement becomes null and void or in the event the Commission does not approve this Agreement, this Agreement, as well as the negotiations or discussions undertaken in conjunction with this Agreement, shall remain inadmissible into evidence in these or any other proceedings in accordance with CRE 408.

5. The Settling Parties will support all aspects of this Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Agreement, it will take no action in any administrative or judicial proceeding, or otherwise, which would have the effect, directly or indirectly, of contravening the provisions or purposes of this Agreement. However, each Settling Party expressly reserves the right

to advocate positions different from those stated in this Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this Agreement or its terms and conditions.

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

7. This Agreement is an integrated agreement that may not be altered by the unilateral determination of any Settling Party. There are no terms, representations or agreements among the parties which are not set forth in this Agreement (including attachments).

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

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

10. This Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Agreement with respect to the issues addressed by

this Agreement. This Agreement may be executed and delivered electronically and the Settling Parties agree that such electronic execution and delivery, whether executed in counterparts or collectively, shall have the same force and effect as delivery of an original document with original signatures, and that each Settling Party may use such facsimile signatures as evidence of the execution and delivery of this Agreement by the Settling Parties to the same extent that an original signature could be used.

Dated this 1st day of May, 2020.

Agreed on behalf of:

PUBLIC SERVICE COMPANY OF COLORADO

By: /s/ Brooke A. Trammell
Brooke A. Trammell
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April 30, 2020

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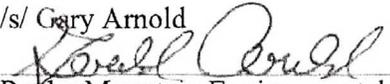
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