Decision No. C18-0417

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 17A-0462EG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF A NUMBER OF STRATEGIC ISSUES RELATING TO ITS ELECTRIC AND GAS DEMAND SIDE MANAGEMENT PLAN.

DECISION APPROVING, WITH MODIFICATIONS, NON-UNANIMOUS COMPREHENSIVE SETTLEMENT; AND ESTABLISHING ELECTRIC ENERGY SAVINGS AND DEMAND REDUCTION GOALS FOR 2019 THROUGH 2023, WITH ASSOCIATED FINANCIAL INCENTIVES, PURSUANT TO § 40-3.2-104, C.R.S.

Mailed Date: June 6, 2018
Adopted Date: April 11, 2018

TABLE OF CONTENTS

I. BY THE COMMISSION 2
A. Statement 2
B. Discussion 3
C. Statutory Requirements and Commission Policies 6
D. DSM Strategic Issues Application 7
E. Terms of the Non-Unanimous Comprehensive Settlement 10
F. Electric Energy Savings Goals and the Associated Incentive 13
1. Position of the Settling Parties 13
2. Opposing Positions 16
a. CEO 16
b. NRDC/Sierra 19
3. Conclusions and Findings 21
G. Demand Reduction Goals and the Associated Incentive 25
H. Incentive Cap 27
I. Annual Electric DSM Budget 28
J. Interruptible Service Option Credit (ISOC) 29

K. Approval of Other Terms of Settlement 30
L. Next DSM Strategic Issues Filing 30
II. ORDER 31
A. The Commission Orders That: 31
B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING April 11, 2018. 32
III. COMMISSIONER WENDY M. MOSER DISSENTING 32
A. Electric Energy Efficiency 32
B. Demand Response 38
C. Settlement 39
IV. CHAIRMAN JEFFREY P. ACKERMANN SPECiALLY CONCURRING 41
A. Electric Efficiency (Demand-Side Management) as a Resource 41
B. Applying "Fairness" to DSM 44

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission approves, with modifications, the Non-Unanimous Comprehensive Settlement Agreement (Settlement) filed by Public Service Company of Colorado (Public Service or Company) on February 26, 2018.[1] The Settlement resolves all issues raised in this proceeding related to Public Service's proposals for its Demand Side Management (DSM) plans to be filed for the period 2019 through 2023.

2. Pursuant to § 40-3.2-104(2)(c), C.R.S., the Commission establishes electric energy savings and demand reduction goals for 2019 through 2023. In association with these

[1] Commissioner Wendy M. Moser voted to approve the Settlement without modifications.

goals, the Commission approves annual program budgets and a package of financial incentives for Public Service pursuant to § 40-3.2-104(5), C.R.S., that includes: (1) the collection of costs through a cost adjustment clause; (2) a disincentive offset of $3 million annually; and (3) a performance-based incentive in relation to the energy savings goals.

3. Pursuant to § 40-3.2-103, C.R.S., and 4 *Code of Colorado Regulations* (CCR) 723-4-4750, *et seq*., of the Rules Regulating Gas Utilities and Pipeline Operators, the Commission approves Public Service's existing natural gas DSM portfolio, and any changes to this portfolio shall be addressed through Public Service's next DSM plan filing.

4. Public Service shall submit for Commission approval, a biennial DSM plan for its electric and natural gas DSM for 2019 and 2020, consistent with the terms of the Settlement as modified by this Decision. Public Service also shall file an advice letter to modify its electric Demand Side Management Cost Adjustment (DSMCA) tariff and its Interruptible Service Option Credit (ISOC) tariff, consistent with the discussion below.

B. Discussion

5. On July 3, 2017, Public Service filed an Application for Approval of Strategic Issue Proposals Relating to Its Next Electric and Gas Demand Side Management Plan (Application). Public Service requested an order with approvals and authorizations pursuant to §§ 40-3.2-103 and 40-3.2-104, C.R.S. Public Service stated that the strategic issues decided in this proceeding would form the basis of the Company's next DSM plan to be filed in 2018.

6. On August 14, 2017, by Decision No. C17-0659-I, the Commission set the Application for hearing and established the parties in this proceeding to include: Public Service; the Staff of the Colorado Public Utilities Commission (Staff); the Colorado Office of Consumer Counsel (OCC); the Colorado Energy Office (CEO); the Southwest Energy Efficiency Project (SWEEP); CF&I Steel LP, doing business as Evraz Rocky Mountain Steel (CF&I); the Colorado

Energy Consumers (CEC); the Colorado Solar Energy Industries Association; the Energy Efficiency Business Coalition (EEBC); the City of Boulder (Boulder); Energy Outreach Colorado (EOC); the City and County of Denver; Western Resource Advocates (WRA); Wal-Mart Stores Inc. and Sam's West Inc. (Walmart); the Colorado Renewable Energy Society (CRES); Open Energy Efficiency, Inc. (OpenEE); Sierra Club and National Resources Defense Council (NRDC/Sierra); and Climax Molybdenum Company (Climax).

7. By Decision No. C17-0717-I, issued on August 30, 2017, the Commission acknowledged Public Service's waiver of the statutory deadlines in § 40-6-109.5, C.R.S., and established a procedural schedule for the consideration of the Application with an evidentiary hearing from March 5 through 9, 2018.

8. On September 29, 2017, Public Service filed Supplemental Direct Testimony pursuant to Decision No. C17-0703-I.[2]

9. On December 5, 2017, Staff, OCC, CEO, SWEEP, OpenEE, Walmart, Boulder, CEC, EOC, WRA, EEBC, NRDC/Sierra, and CRES filed Answer Testimony. CF&I and Climax also jointly filed Answer Testimony.

10. On January 23, 2018, Public Service filed Rebuttal Testimony.

11. Also on January 23, 2018, CEO, CEC, EOC, SWEEP, and CRES filed Cross-Answer Testimony. CF&I and Climax jointly filed Cross-Answer Testimony.

12. By Decision No. C18-0124-I, issued February 16, 2018, the Commission granted an unopposed motion filed by Public Service to extend the filing deadline for settlement agreements. The Commission set February 26, 2018 as the deadline for the submission of stipulations and settlement agreements and directed Public Service to file a status report on the

[2] Decision No. C17-0703-I was issued in this proceeding on August 23, 2017.

parties' settlement discussion in the event no stipulation or settlement agreement was reached by that date.

13. On February 26, 2018, Public Service filed the Settlement. Public Service also filed a Joint Motion to Approve Settlement Agreement. The following parties joined in the Settlement: Public Service, Staff, OCC, WRA, Climax, EEBC, EOC, CF&I, Boulder, OpenEE, SWEEP, and CEC (Settling Parties).

14. By Decision No. C18-0157-I, issued on March 2, 2018, the Commission modified the procedural schedule to allow for the filing of written testimony directed at the Settlement and to shorten the evidentiary hearing by two days in light of the Settlement.

15. On February 28, 2018, Public Service filed Direct Testimony in support of the Settlement.

16. On March 5, 2018, CEO, NRDC/Sierra, and CRES filed Supplemental Answer Testimony opposing the Settlement Agreement.

17. The Commission convened a prehearing conference on March 6, 2018.

18. By Decision No. C18-0161-I, issued on March 6, 2018, the Commission vacated the hearing scheduled for March 7, 2018.

19. The Commission conducted a hearing on the Settlement on March 8, 2018. Hearing Exhibits 100-106, 108-116, 200-201, 300, 400, 500-501, 600-602, 700, 800-802, 900-902, 1000, 1100-1101, 1200-1201, 1300-1301, 1400, and 1500 were offered and admitted into the evidentiary record.

20. On March 23, 2018, Statements of Position (SOPs) were filed by Public Service and the other Settling Parties as well as CEO, NRDC/Sierra, and CRES.

C. Statutory Requirements and Commission Policies

21. Public Service implements electric and gas DSM programs pursuant to §§ 40-1-102(5)-(8), 40-3.2-103, and 40-3.2-104, C.R.S. The Colorado General Assembly enacted these statutes in 2007. Section 40-1-102(6), C.R.S., defines DSM programs as, "energy efficiency, conservation, load management, and demand response programs or any combination of these programs." The General Assembly amended § 40-3.2-104, C.R.S., which addresses electric DSM during the 2017 legislative session, shortly before Public Service filed this Application.

22. For Public Service's electric DSM programs, § 40-3.2-104(2)(a), C.R.S., requires that the Commission "establish energy savings and peak demand reduction goals." In doing so, the Commission must take into account the Company's cost-effective DSM potential, its need for electricity resources,[3] the benefits of its DSM investments, as well as other factors when setting these energy savings and demand reduction goals.

23. Section 40-3.2-104(2)(c), C.R.S., establishes minimum goals as follows:

> Commencing January 1, 2019, the energy savings and peak demand reduction goals must be at least five percent of the utility's retail system peak demand, measured in megawatts, in the base year and at least five percent of the utility's retail energy sales, measured in megawatt-hours, in the base year. The base year is 2018. The goals shall be met in 2028, counting savings in 2028 from demand-side management measures installed starting in 2019. The commission may establish interim goals and may revise the goals as it deems appropriate.

24. Public Service states that these statutory requirements translate into approximately 1,540 GWh in energy savings from 2019 through 2028 (or roughly 154 GWh per year) and 294 MW of demand reduction during the same period.

[3] Section 40-3.2-104(3), C.R.S., recognizes that cost-effective DSM reduces the need for additional utility resources acquired pursuant to a Commission-approved Electric Resource Plan.

25. The Commission is further required to allow an opportunity for a utility's investments in cost-effective electric DSM "to be more profitable to the utility than any other utility investment that is not already subject to special incentives." (*See*, § 40-3.2-104(5), C.R.S.) The profitability of the electric DSM investments may tie to certain forms of incentives set forth in the statute which include: (1) rates of return on DSM investments that are higher than the rate of return on other types of investments; (2) accelerated depreciation or amortization of DSM investments; (3) the retention of shares of net economic benefits, which is a component of the Company's existing electric DSM incentive; and (4) cost recovery through a rate adjustment mechanism, such as the Company's electric DSMCA.

26. Since the enactment of § 40-3.2-104(5), C.R.S., in 2007, the Commission has expected Public Service to "aggressively pursue all cost-effective DSM."[4] The Commission last established electric energy savings and demand reduction goals for Public Service in Decision No. C14-0731 in Proceeding No. 13A-0686EG issued July 1, 2014.

27. For Public Service's gas DSM programs, the Commission adopted policies through a rulemaking pursuant to § 40-3.2-103, C.R.S. The Commission's gas DSM rules are set forth at 4 CCR 723-4-4750, *et seq*. In accordance with these rules, the Commission establishes savings goals and associated "bonuses" for performance related to those goals.

D. DSM Strategic Issues Application

28. Public Service explains that a DSM strategic issues proceeding is intended to address the Company's goals, budgets, policies, and procedures to inform future DSM plans. This proceeding is the fourth in which the Commission, Public Service, and interested

[4] Decision No. C08-0560, issued June 5, 2008, Proceeding No. 07A-420E. "… the Commission should establish an incentive package that provides sufficient incentive to meet the statutory requirements and signal to Public Service our expectation that it aggressively pursue all cost-effective DSM…" *Id.* at p. 33.

stakeholders examine the policies that will shape the Company's future DSM plan filings. Such plan filings set forth Public Service's detailed savings forecasts and budgeted expenditures for each of its energy efficiency and demand response programs, products, and pilots. DSM plans also address DSM administration and evaluation, measurement, and verification (EM&V). Public Service has historically filed combined gas and electric DSM plans on a biennial basis.

29. Public Service states that its goals for this proceeding are to align its DSM initiatives with "the realities of the DSM market and the evolving DSM landscape."[5] The Company seeks to: (1) enhance its ability to administer and manage its DSM programs; (2) ensure the Company is made whole for its DSM initiatives; (3) ensure the Company is sufficiently incentivized to cost-effectively achieve DSM savings above and beyond the statutory goals; (4) implement EM&V to track the value delivered to customers from the Company's DSM programs; (5) evaluate the Company's performance in achieving and exceeding its minimum goals; (6) account for DSM efforts that are occurring outside the Company, such as improvements to energy efficient lighting and appliances; and (7) ensure the Company's DSM programs are structured in a way that creates a sustainable and cost-effective future for DSM.

30. Public Service seeks an order from the Commission that approves the Company's proposed electric energy efficiency goals and demand reduction goals for 2019 through 2023. Public Service also seeks approval of a modified incentive structure for its electric DSM achievements. The Company further requests approval of: (1) new methods for determining the avoided energy cost associated with its DSM programs; (2) various updates to avoided cost and other calculations consistent with the Company's latest Electric Resource Plan (ERP) such as capacity values (Proceeding No. 16A-0396E); (3) methods for determining reduced and avoided

[5] Hearing Exhibit 101, Brockett Direct, pp. 26-27.

emissions; (4) methods for calculating certain types of savings; and (5) a new approach for categorizing certain DSM vendor incentives as rebates instead of administrative costs.

31. Public Service also introduces guidelines for geo-targeting its DSM. Geo-targeting is a tool to strategically target DSM to areas with system constraints using DSM marketing and outreach on specific geographical areas, which can maximize benefits to all customers.[6] Specifically, the Company seeks authorization to encourage customers in certain geographic areas within its service area with greater DSM rebates than customers in non-targeted areas.

32. Public Service also seeks Commission approval of proposed modifications to its ISOC program. The proposed modifications entail the elimination of the One-Hour Notice program. Public Service seeks to grandfather existing Within Ten Minute Notice customers but also to implement a new Within Ten Minute Notice program based on a modified foundational credit. The Company also seeks authorization to file a compliance advice letter within 90 days of the effective date of its final order, but on not less than ten days' notice, with revised ISOC tariff sheets reflecting all changes to the Company's ISOC tariff approved in this proceeding.

33. In terms of electric DSM cost recovery, Public Service requests authority to file a compliance advice letter within 90 days of the effective date of its final order, but on not less than ten days' notice, with revised electric DSMCA tariff sheets reflecting all changes approved in this proceeding.

34. Finally, Public Service seeks approval of its existing natural gas energy efficiency portfolio and a finding that any changes be addressed through the Company's next DSM plan.

[6] Hearing Exhibit 105 Beaman Direct, p. 3

E. Terms of the Non-Unanimous Comprehensive Settlement

35. The Settling Parties request that the Commission issue an order approving the Settlement without modification and granting the Application, as modified by the Settlement.[7]

36. According to the Settling Parties, Colorado law establishes that it is in the public interest for a utility to achieve energy savings and demand reductions above statutory minimums and that a utility's DSM actions should be both cost-effective for society and profitable for the utility. They explain that the proposed goals for electric energy savings and demand reductions intertwine closely with the proposed financial incentives mechanism.[8]

37. The Settling Parties request that the Commission grant the Application as modified by Settlement.

38. The Settlement proposes an annual electric energy efficiency program budget of $78 million, with a presumption of prudence for expenditures up to 10 percent over this budget. Public Service agrees to dedicate at least 25 percent of its DSM expenditures to residential DSM initiatives. Public Service also agrees to spend not less than $3.8 million annually on its low-income electric energy efficiency program from 2019 through 2023.

39. Regarding the electric DSM goals for Public Service, the Settling Parties propose the following for the years 2019 through 2023: an energy efficiency savings goal of 400 GWh per year; a demand reduction goal from efficiency measures of 75 MW per year; and a series of demand response goals of 465 MW for 2019, 476 MW for 2020, 489 MW for 2021, 503 MW for 2022, and 520 MW 2023.

40. In conjunction with the energy savings goals, the Settlement proposes a two-part financial incentive in the same form as Public Service's existing incentive mechanism. The first

[7] The Settlement is attached to this Decision as Attachment A.

[8] Joint Motion to Approve Settlement Agreement p. 4

part is a performance incentive that would reward Public Service for achieving savings between 70 percent and 125 percent of the proposed 400 GWh annual savings goal. Specifically, Public Service would earn 38 percent of the incremental net economic benefits for energy efficiency savings achieved from 280 GWh up to 450 GWh and 19 percent of the incremental net benefits for savings between 450 GWh and 500 GWh. Public Service would not earn any incentive for performance below 280 GWh or any incremental incentive for savings above 500 GWh.

41. The second part of the financial incentive is a disincentive offset that awards Public Service $1.5 million each year upon achieving the annualized statutory minimum of 160 GWh of savings and an additional $1.5 million once the Company achieves at least 280 GWh of energy savings that year. The purpose of the disincentive offset is to mitigate the financial disincentive Public Service faces when it pursues electric DSM, which may represent foregone or "lost" margins. The Settlement proposes a cap on the performance incentive calibrated around $48 million, which is 150 percent of the estimated net economic benefits associated with 400 GWh of annual savings.

42. The Settlement also proposes a new demand response performance incentive to award Public Service 15 percent of the benefits of its demand response products, as calculated by applying the Rate Impact Measure Test, capped at no more than $2.5 million annually.

43. The Settlement further proposes an overall cap on the total electric financial incentive (sum of the performance incentive, disincentive offset, and demand response incentive) of $15 million per year. For context, Public Service projects that it would earn a performance incentive of $3.8 million and a total incentive of $9.15 million for energy savings of 400 GWh or 100 percent of its goal.[9]

[9] Hearing Exhibit 115, Brockett Settlement Direct, Table SBB-SD-2. The total amount includes $2.4 million for a demand response incentive.

44. The Settlement addresses Public Service's proposals to change the method it uses to calculate the avoided costs associated with its electric DSM. Specifically, the Settling Parties do not oppose Public Service's proposed transition from its Strategist software to PLEXOS software for purposes of calculating Public Service's avoided cost of energy associated with its electric DSM. However, the Settlement sets forth various terms and conditions regarding the change to PLEXOS. For example, the inputs to PLEXOS must be consistent with Public Service's most recent ERP base case scenario and the load forecast used in DSM plan modeling will include embedded DSM from historic plans but will not include incremental DSM from future DSM Plans. In addition, the marginal energy cost approved in a DSM plan will be utilized for the duration of that DSM plan.

45. The Settling Parties agree that for purposes of evaluating cost-effectiveness, Public Service shall apply a 50 percent "non-energy benefits adder" to low-income measures and products and a 20 percent adder to all other measures and products. However, the non-energy benefits adder will only apply for screening purposes and will be excluded from the calculation of the net economic benefits used to derive the proposed financial incentives.

46. Under the terms of the Settlement, Public Service will offer the following as part of its DSM plans from 2019 through 2023: residential weatherization and building envelope; heating and cooling; commercial new construction; energy audits and design assistance; and commercial lighting. Public Service maintains the discretion to determine the specific products or measures offered to provide these services and the implementation design of those products. Public Service also agrees to work with OpenEE, EEBC, EOC, and SWEEP to identify and define innovative programs and identify how those programs can be implemented in future DSM plans.

47. In addition to these programs and products, the Settling Parties agree that Public Service may include a geo-targeting product on a pilot basis in its 2019-2020 DSM plan. Under the terms of the Settlement, Public Service may propose up to three projects per year during its pilot addressing areas where distribution upgrades are necessary due to increased demand or where system constraints are the greatest. The costs associated with Public Service's geo-targeting pilot would be included within the Company's total DSM budget.

48. With respect to the ISOC, the Settlement proposes three major structural changes to the program: (1) the "grandfathering" of the Within Ten-Minute offering; (2) the introduction of a new Within-Ten Minute offering; and (3) the elimination of the Within One-Hour offering.

49. The Settling Parties further agree that any changes to the Company's existing natural gas energy efficiency portfolio be addressed through the Company's next DSM plan filing. However, the Settlement proposes that Public Service maintain an annual natural gas DSM budget of $12 million. Public Service also agrees to spend not less than $3.3 million annually on its low-income gas energy efficiency program from 2019 through 2023.

50. Finally, Public Service commits to filing its next DSM Strategic Issues proceeding on or before March 1, 2022.

F. Electric Energy Savings Goals and the Associated Incentive

1. Position of the Settling Parties

51. The Settling Parties argue that it is in the public interest to encourage Public Service to continue delivering electric efficiency DSM for the next five years above statutory levels using financial incentives. The Settling Parties further argue that establishing an energy savings goal and incentive structure at "potentially unachievable levels" may not be in the public

interest because Public Service may simply choose not to reach that goal.[10] The Settling Parties further argue that setting a single point goal with no flexibility (*e.g.*, 450 GWh per year) could drive Public Service to pursue non cost-effective measures in order to maximize its financial benefit.

52. The Settling Parties take the position that declining net economic benefits from DSM support the goal and incentive structure proposed in the agreement. They note that in 2012 customers realized $169 million in net economic benefits, but that such benefits declined to $120 million in 2016 and are projected to decline further to only $77 million in 2017.[11] The Company projects that net economic benefits will continue to decrease because of declining avoided costs.

53. The Settling Parties also explain that the proposed incentive mechanism was developed to increase ratepayer benefits by providing an incentive only if the Company can find it cost-effective to achieve energy savings exceeding 400 GWh per year. They argue that the magnitude of the Company's financial incentive will be less if the DSM market changes to a condition where it is not cost-effective to achieve 400 GWh of energy savings. Therefore, while beginning the incentive at 70 percent is "an acknowledgement that 400 GWh may not be achievable, scaling the incentive to 125 percent is likewise an acknowledgement that 450-500 GWh may be achievable depending on the circumstances in a given year."[12]

54. The Settling Parties further state that the two-part disincentive offset provides Public Service with only a modest compensation for financial losses attributable to DSM and

[10] Public Service Joint SOP, p. 11.

[11] Net economic benefits that result from investment in energy that all customers realize after all of the costs of DSM measures are accounted for, including any incentives to the Company.

[12] Hearing Transcript 125:15-126:1, Hearing Exhibit 116, White Direct Testimony in Support of Settlement p. 10

only up to the point where the Performance Incentive begins.[13] At hearing, Public Service took the position that the disincentive offset is an acknowledgment that DSM works against the Company's financial interests.[14]

55. Public Service argues that its historic performance on energy savings does not justify setting a singular goal of 500 GWh, which is a level recommended by certain intervening parties opposed to the Settlement. At hearing, Public Service stated that the Company could cost-effectively achieve energy savings of between 415 GWh and 430 GWh in 2019 and 2020, which is in line with its historic performance. However, Public Service also stated that the Company's ability to reach that level of savings in years after 2020 is less certain, pointing to changes in lighting programs that reduce the Company's ability to claim savings.[15] Public Service further stated that external factors such as increasing energy efficiency standards and building codes, which reduce customers' energy use without Company-sponsored DSM programs, also create uncertainty about the future impact of traditional utility-sponsored DSM programs.

56. Public Service argued that the changing DSM landscape is reducing the potential for cost-effective DSM. Public Service supports the proposed performance incentive in the Settlement, because it provides a glide path that encourages the Company to pursue cost-effective savings in excess of 400 GWh and yet also provides some financial incentive to the Company if it is not possible to attain the 400 GWh savings goal.[16]

57. In addition, Public Service concludes that the Settlement's proposed goals and incentive structure provides opportunities for the Company to maximize energy savings in those

[13] Hearing Exhibit 115, Brockett Direct Testimony in Support of Settlement, p. 26-27

[14] Transcript 92:1-92:4

[15] *See* also Public Service Joint SOP, pp. 10-11.

[16] Transcript 16:18-16:24.

years where the market opportunity is greatest. In short, Public Service concludes that the terms of the Settlement allow the Company to maximize savings with the highest cost-effectiveness.

58. Staff supports the Settlement, arguing that the 400 GWh goal is appropriate because the annual budget for DSM spending likely would drive Public Service to "land pretty much in the 400-plus gigawatt range"[17] while the other terms of the agreement provide the Company an opportunity to exceed 400 GWh of savings if there are additional cost-effective savings opportunities.[18] Staff also agrees with Public Service's position that the disincentive offset is an acknowledgement that DSM runs counter to the Company's business model. Staff argues that the offset does not provide one-for-one recovery of lost margins and it is not intended to do so. Staff ties the disincentive offset to the proposed overall financial incentive package, arguing that awarding the entire disincentive offset at 280 GWh of savings prevents overlap with the performance incentive, which starts above that level.

2. Opposing Positions

a. CEO

59. CEO advocates for an annual energy savings goal of 500 GWh for 2019 through 2023. CEO argues that other parties, including SWEEP and NRDC/Sierra, have demonstrated that Public Service's DSM Market Potential Study,[19] which serves as the basis for the Company's proposed energy savings goals proposed for approval by the Application, was flawed in that it underestimated the potential energy savings. In addition to highlighting the flaws in the potential study, CEO is of the opinion that Public Service has not implemented all DSM programs or energy savings opportunities. Finally, based on the Company's own testimony, CEO argues that

[17] *Id*.
[18] Transcript 146:18- 146:22
[19] Hearing Exhibit 102, White Direct, Att. SMW-2.

Public Service is not actually in danger of failing to achieve energy efficiency savings of 400 GWh. CEO notes that the Company has demonstrated it was able to achieve or exceed 400 GWh of savings in recent years, when properly motivated.

60. CEO points out that even if the relative cost effectiveness of DSM as measured by the Modified Total Resource Cost Test (MTRC)[20] has declined recently, as argued by the Settling Parties, an MTRC above 1 means that DSM is still both cost-effective and the lowest cost resource. According to CEO, a lower MTRC means that DSM is not as low cost a resource as it was in the past, not that DSM is not cost effective. Further, CEO notes that Public Service "in recent years provide evidence that if the Company wasn't implementing DSM programs, it has incurred other costs that are three times greater—costs that customers would have had to pay for through base rates. The UCT shows that the Company's DSM programs are not a burden on ratepayers, but instead save ratepayers a substantial amount of money."[21]

61. CEO therefore recommends that the Commission modify the Settlement to establish an energy efficiency goal of at least 500 GWh consistent with its policy of pursuing all cost-effective DSM. (CEO also presents an alternative recommendation if the Commission is unwilling to adopt 500 GWh as the annual savings goal.) CEO further suggests the Commission modify the financial incentive so that Public Service earns its disincentive offset at no less than 400 GWh of savings (*i.e.*, 100 percent of goal) and set 400 GWh as the starting point for the performance incentive with increasing incentives between 400 and 500 GWh.[22]

62. CEO argues that the Settlement inappropriately provides a significant financial incentive to Public Service to achieve less energy efficiency savings than the Company has

[20] The MRTC derives, in part, from § 40-1-102(5), C.R.S.
[21] CEO SOP, pp. 6-7.
[22] Hearing Exhibit 902, Pereira Answer, p. 25.

attained in recent years. CEO contends that the proposed electric energy savings goals and financial incentives would only serve to enrich Public Service with no corresponding benefit to ratepayers. CEO reasons that the Commission should not find the proposed financial incentive mechanisms to be in the public interest, because they are contrary to past Commission policies,[23] they may result in higher bills for customers, and they create uncertainty around the level of DSM savings that Public Service will choose to pursue.

63. CEO expresses that a DSM incentive structure should motivate high levels of cost-effective energy savings, encouraging the utility to expand its performance beyond the status quo to attain greater savings and net benefits for ratepayers. CEO argues that under the incentive structure proposed in the Settlement, Public Service will have earned 80 percent of the total possible financial incentives by the time it reaches the 400 GWh level of savings and therefore would have little incentive to go beyond the goal to achieve all available cost-effective savings.

64. CEO also points out that Public Service witness White stated that under the past electric savings framework, the Company tracked its energy savings compared to the goal throughout the year and if the Company was falling short it "would be taking actions. . .to try and close gaps to 400 [GWh of savings]."[24] In past years, Public Service offered greater incentives or "bonus rebates" for certain DSM products in the final months of the year in order to push toward the savings goal. CEO takes the position that if the financial incentives are not tied to the goal, the Company will not have the same strong motivation to do everything in its power to achieve that goal.

[23] CEO SOP, p. 9.

[24] Hearing Transcript 134:15-134:17

65. CEO recommends the disincentive offset start at 100 percent of the energy savings goal, as the Commission has never approved awarding a partial disincentive offset after achieving only 40 percent of the goal, or a full disincentive offset and a performance incentive after achieving only 70 percent of the goal.

66. CEO concludes the Settlement is a risk management mechanism for Public Service, where the goal of the agreement is to ensure Public Service can recover its lost margins and earn a profit on DSM. While Public Service has the opportunity to recover its lost margins and earn a profit, CEO points out that it is not guaranteed those earnings absent a certain level of DSM performance.

b. NRDC/Sierra

67. NRDC/Sierra argue that the 400 GWh proposed in the Settlement does not capture all of the cost effective savings available to Public Service. NRDC/Sierra acknowledge that market conditions for DSM are changing and there is less certainty about savings, nevertheless Public Service has not shown any evidence that it cannot achieve 400, 450, or 500 GWh of energy savings. As a result, NRDC/Sierra recommend that the Commission order Public Service to achieve savings goals of 550 GWh in 2019, 575 GWh in 2020, and 500 GWh in each year for 2021 through 2023. (CRES supports the goals set forth by NRDC/Sierra.)

68. NRDC/Sierra contend that while the Settlement has the apparent benefit of setting a lower budget for electric DSM corresponding to the proposed 400 GWh goal, the lower budget results instead in increasing customer bills because the cost of energy efficiency is less than the cost of the increased capacity, generation, and transmission and distribution upgrades investments they offset. For example, Staff claims at hearing that with the 100 GWh difference, between the 400 and the 500, the savings are not t left on the table because the Company will pick it up the following year and start working into those savings and gathering those net

economic benefits.[25] NRDC/Sierra counter this claim, stating that every year that cost-effective energy efficiency investments are left on the table forecloses some of those investments for years – or even decades – to come. NRDC/Sierra argue that Staff's position ignores the fact that when home owners, building owners, or other utility customers make investments in buildings and equipment, those investments are locked in for years. Therefore, if Public Service misses the opportunity to encourage those investments towards more efficient technology in the year they might happen, they may not have another opportunity to do so for many years, and higher energy uses are effectively "locked-in".

69. NRDC/Sierra also argue that without modification, the Commission should not find the Settlement in the public interest with respect to the combination of the proposed goals and financial incentives. Specifically, NRDC/Sierra Club argue that the Settlement is inconsistent on two fronts with the directives contained in § 40-3.2-104(5), C.R.S., that, "[t]he commission shall allow an opportunity for a utility's investments in cost-effective DSM programs to be more profitable to the utility than any other utility investment that is not already subject to special incentives."

70. First, NRDC/Sierra contend that the Settlement denies Public Service any opportunity to earn a reward on cost-effective DSM programs above 500 GWh because the incentive mechanism cuts out entirely at that point. This elimination of benefit sharing means that there is no incentive, let alone a more profitable incentive, for the Company to pursue additional cost-effective DSM measures above 500 GWh.

71. Second, NRDC/Sierra contend that the proposed incentive structure fails to comply with the requirement that the Company have an opportunity to make more profit on

[25] Hearing Transcript 153:15- 153:19

DSM than on traditional rate based investments. For instance, NRDC/Sierra show that the proposed incentive reaches its upper limit at $5.9 million at a savings level of 500 GWh and that this incentive falls short of the $6.24 million necessary to reach the 8 percent extra profit threshold suggested by the OCC.[26]

3. Conclusions and Findings

72. We find that 500 GWh of annual energy savings for the period 2019 through 2023 is reasonable and supported by the evidence. We agree with CEO that cost-effective electric DSM results in a variety of benefits to the Company's ratepayers and the state as a whole, including economic benefits for DSM program participants who realize bill savings, as well as cost savings for all ratepayers because saving energy is less expensive than building new generation resources. Additionally, environmental benefits, such as decreased air pollution, inure to the benefit of the public. Indeed, the General Assembly, pursuant to § 40-3.2-101, C.R.S., in expressing its intent in enacting the Air Quality Improvement legislation, explicitly recognized these benefits. Through decisions in previous strategic issues proceedings, the Commission has consistently expressed a desire for Public Service to pursue all possible cost-effective electric DSM. Cost-effective savings at the 500 GWh level will provide increased benefits to customers and reduce the cost of utility investments.

73. The Commission is persuaded by the testimony offered by CEO, NRDC/Sierra, and SWEEP, as well as the analysis of the Company's DSM potential submitted by SWEEP[27] that the energy savings goals for Public Service should be set at 500 GWh for each year for the period 2019 through 2023. While Public Service has historically argued for lower energy

[26] NRDC/Sierra SOP, pp. 14-15.

[27] Hearing Exhibit 1300, Geller Answer Testimony pp 41-44.

savings goals based on a "changing marketplace," we conclude that the Company's achieved annual DSM savings demonstrate a remarkably stable market for cost-effective electric DSM.

74. Further, the Commission agrees with CEO, and to an extent with NRDC/Sierra, that the terms of the Settlement allowing Public Service to determine the appropriate level of savings, given the flexibility afforded to the Company with respect to budgets, and the intertwined structure of goals and financial incentives, represent a departure from the past Commission policy of pursuing all cost-effective electric DSM. The record supports the conclusion that the DSM market potential study provided by Public Service contains several flaws or omissions that result in an understatement of the savings that may be available to the Company through 2023.[28]

75. The Settling Parties carry the burden of proof to show that the terms of the Settlement are in the public interest and that changes in the DSM market have diminished or lessened the Company's ability to reach 400 GWh. However, Public Service and the Settling Parties instead have stated that the Company can cost-effectively achieve energy savings at or above 400 GWh.[29] There is no evidence in the record indicating that electric DSM measures are likely to fall below the minimum 1.0 used to determine cost effectiveness in the MTRC screening tests. In fact, a recent MTRC score of 1.8 and a Utility Cost Test (UCT) score of 3.09 show stability in the Company's DSM programs and suggest that there is additional room for more savings if programs and measures are well managed.[30] We also agree with CEO's observation that results from the UCT in recent years provide evidence that had Public Service not implemented electric DSM programs, the Company would have incurred other costs that are

[28] *Id*.

[29] During the hearing the Company stated that it believes that it will be able to save roughly 430 GWh annually through 2020.

[30] Hearing Transcript 239:16- 239:23

three times greater than customers would have had to pay through base rates.[31] DSM programs are not a burden on ratepayers but instead save ratepayers money.

76. In considering the electric savings goal and associated incentive, we also conclude that clarity concerning the amount of electric DSM Public Service is expected to achieve is necessary, and that expected savings should not be left completely to the discretion of the Company. We agree with CEO that if the Commission adopts the terms of the Settlement without modification, there is little certainty about the level of DSM Public Service might pursue. For example, the Company may achieve 280 GWh of savings if it determines that level of savings is in the Company's overall financial interest. Conversely, the Company could determine that 500 GWh is achievable without undue financial burden. The uncertainty of a level of annual savings is not in the interest of Public Service's customers or the trades that provide efficiency services and products. Rather, stable, predictable levels of required savings lead to more stable DSM.

77. SWEEP posits that it is likely that customers would benefit from higher levels of energy savings of up to 500 GWh per year and that there would be additional net economic benefits for customers as a whole.[32] SWEEP also acknowledges that Public Service has been very conservative in its projections of savings in past DSM plans and DSM strategic issues dockets such as this proceeding.[33] SWEEP maintains that Public Service has surpassed the goals established by the Commission from 2009 through 2017, usually below budget. SWEEP agrees that Public Service likely can achieve savings in the range of 450 to 500 GWh with the annual budget included in the Settlement.[34]

[31] CEO SOP p. 5-6

[32] Hearing Transcript 183:17- 184:7, 184:24- 185:3

[33] Hearing Transcript, 186:2-. 186:9.

[34] Hearing Transcript, 186:14-. 186:21.

78. Based on the foregoing, we find it in the public interest to establish an annual electric energy savings goal of 500 GWh for the period 2019 through 2023 in accordance with § 40-3.2-104(2)(c), C.R.S.

79. Turning to the structure of the incentive mechanism for electric energy savings, the Commission finds that the performance incentive proposed in the Settlement fails to provide sufficient incentive to encourage Public Service to pursue all cost-effective DSM, and therefore, is not in the public interest. The Commission has structured electric DSM incentives for Public Service in the past to reward the Company typically at or above 100 percent of the annual savings goal. For example, in Decision No. C11-0442, the Commission stated "[t]he primary purpose of [the performance incentive] is to emphasize the achievement of the higher electric energy savings goals that we also establish by this Order."[35] Contrary to this approach, the incentive proposed in the Settlement would award Public Service the majority of its total possible financial incentive prior to reaching the savings goal. Namely, the Company would earn 52 percent of the total possible financial incentives at only 300 GWh of savings and 69 percent of the total possible financial incentives at 360 GWh of savings.[36] In conjunction with the proposed incentive being rewarding Public Service at low levels of savings, we agree with CEO and NRDC/Sierra that the decreasing incentive levels at higher levels of savings would tend to discourage, rather than encourage, greater savings.

80. We therefore modify the financial incentive proposed in the Settlement. The performance incentive component of the financial incentive for electric energy savings will instead award to Public Service 40 percent of incremental net economic benefits beginning at 80 percent of the 500 GWh goal (40 percent of incremental net economic benefits at 400 GWh of

[35] Decision No. C11-0442, issued April 26, 2011, Proceeding No. 10A-554EG, ¶ 49.
[36] CEO SOP, p. 13.

savings). The performance incentive will further award Public Service 40 percent of incremental net economic benefits up to 550 GWh of savings.

81. Starting in Decision No. C08-0560, the Commission has maintained that the disincentive offset serves merely as an acknowledgement that DSM may run counter to Public Service's business model. The Commission has also recognized the disincentive offset as part of the total financial incentive used to meet the requirements of § 40-3.2-104, C.R.S.

82. We find that awarding the disincentive offset under the terms of the Settlement (at 40 percent and then at 70 percent of the proposed energy savings goal of 400 GWh) is not in the public interest. The overall purpose of any incentive mechanism is to reward desired outcomes, and the payment of the offset at too low levels would dampen the influence of the total incentive mechanism. In line with previous Commission determinations, the first $1.5 million of the disincentive offset will be awarded at 80 percent of the 500 GWh goal established by this Decision (400 GWh), and the subsequent $1.5 million will be awarded at 100 percent of the goal established by this Decision.

G. Demand Reduction Goals and the Associated Incentive

83. The Settlement proposes the following annual demand reduction goals: 465 MW in 2019; 476 MW in 2020; 489 MW in 2021; 503 MW in 2022; and, 520 MW in 2023. These demand response goals are cumulative and exclude demand reductions from the Company's energy efficiency efforts.

84. The Settling Parties also propose a new demand response incentive mechanism associated with these goals. The Settlement offers Public Service 15 percent of the benefits of its demand response products each year, with such benefits calculated by applying the Rate Impact Measure Test to the Company's demand response achievements. The incentive is capped at no more than $2.5 million annually.

85. Public Service argues that the proposed demand response incentive provides the Company the same opportunity for earnings on its demand response initiatives as provided by the incentives for its electric efficiency initiatives, particularly given the removal of the net economic benefits of Saver's Switch from the energy efficiency performance incentive. At hearing, Public Service admitted that the Company historically has pursued demand response without receiving an incentive for the majority of its achievements. Public Service predicts it will increase demand response in reaction to the proposed incentive to the extent that nonparticipating customers benefit.

86. We find the proposed demand response goals are reasonable given historic and recent achievements. The demand response goals of 465 MW in 2019, 476 MW in 2020, 489 MW in 2021, 503 MW in 2022, and, 520 MW in 2023 are established pursuant to § 40-3.2-104(2)(c), C.R.S.

87. While the proposed demand response incentive is unopposed, we do not agree with the Settling Parties that a demand response incentive is appropriate or necessary at this time. The Settling Parties provided no evidence that the proposed incentive will cause new or additional demand response programs necessary to meet or exceed the proposed goals. Further, no evidence was provided through filed testimony or during cross-examination to support implementing a demand response incentive as proposed. Public Service has been pursuing demand reduction goals since the inception of statutorily-mandated DSM without a corresponding incentive specifically attributable to demand reductions. To propose one now, associated with similar levels of performance achieved without an incentive, has no merit.

88. The Settling Parties' contention that Public Service would not be given an opportunity to earn on the demand component of its DSM offerings if there were no financial incentive associated with the Company's demand response goal is likewise unavailing. Public

Service will receive current cost recovery for all of its electric DSM through the DSMCA, including expenditures on demand response, as well as a performance incentive and a disincentive offset for energy savings achievements. The overall incentive package established by this Decision for Public Service's electric DSM investments satisfy the requirements of § 40-3.2-104(5), C.R.S.

H. Incentive Cap

89. The Settling Parties propose a $15 million cap on total annual electric incentive payments made to Public Service as one of several features of the Settlement intended as consumer protections.

90. CEO argues however, that an incentive cap of $15 million could limit the cost-effective savings the Company achieves, recognizing that the exact outcome is dependent on the associated net economic benefits. CEO takes the position that if net economic benefits are at the high end of the spectrum at 150 percent of the Company's estimate, Public Service would exceed the $15 million incentive cap at 490 GWh of savings. If cost-effective savings exist beyond that level, Public Service would not be able to pursue those savings, even though such savings would deliver benefits to ratepayers. As a result, CEO recommends that the Commission set a total incentive cap of $18 million.

91. NRDC/Sierra likewise support an increase in the total incentive cap to $18 million, with this recommendation attached to their proposed 500 GWh savings goal and the higher associated budgets. NRDC/Sierra also present a scenario where the $15 million cap is attained at levels below the 500 GWh savings goal because net economic benefits are higher than currently estimated.

92. The Commission agrees with CEO and NRDC/Sierra that in order to encourage the pursuit of all cost-effective DSM, the incentive cap should be raised from $15 million to

$18 million. The increase in the cap will allow Public Service to pursue the most cost effective electric DSM consistent with the annual energy savings goal of 500 GWh per year.

I. Annual Electric DSM Budget

93. The Settlement calls for a budget cap of $78 million per year for electric DSM, with the provision that up to an additional 10 percent over this amount could be invested in energy efficiency with a presumption of prudence for Public Service in terms of cost recovery.

94. CEO argues that the $78 million budget cap could limit the implementation of cost-effective energy efficiency savings. Assuming the average cost per MWh of savings, CEO calculates that Public Service can achieve a little more than 400 GWh within the $78 million budget and that, by adding the additional 10 percent above the budget ($85.8 million), the Company can achieve up to 450 GWh of savings. CEO surmises that within the budget proposed in the Settlement, Public Service would not likely achieve 500 GWh in savings.

95. NRDC/Sierra recommend an annual budget cap of $90 million, with a similar 10 percent addition with adjustments. NRDC/Sierra witness Mr. Grevatt testified at hearing that the budget cap proposed in the Settlement conspires with the proposed performance incentive structure to reward average performance rather than high performance.[37]

96. We agree with CEO and NRDC/Sierra that the annual budget for electric DSM in the Settlement may be insufficient for Public Service to achieve the expected levels of energy efficiency savings as indicated by the goals established by this Decision. While the Settling Parties view the cap on the budget as a ratepayer protection, the cap may also cause lost opportunities for savings and foregone economic benefits. Cost-effective DSM continues to be Public Service's lowest cost electricity resource. To the extent that Public Service forgoes

[37] Hearing Transcript 238:1- 238:6

energy savings in a year as a result of a budget cap, the result may be higher long-run costs to ratepayers.

97. We are also mindful of potential rate impacts of electric DSM spending as recovered on an annual basis through the DSMCA. We therefore approve the base budget of $78million annually as proposed in the Settlement but modify the additional amount Public Service may spend by increasing the additional expenditures the Company may devote to electric DSM from 10 percent to 20 percent with an attendant presumption of prudence. This modification to the terms of the Settlement will allow for total spending of up to $93.6million for Public Service to meet the goals established by this Decision and to achieve the associated net economic benefits for ratepayers.

J. Interruptible Service Option Credit (ISOC)

98. Public Service's ISOC is a demand response program that provides bill credits to certain large commercial and industrial customers in return for allowing the Company to interrupt electric supply to the customer at certain times. Interruptions usually occur during system peak electric demand conditions.

99. By Decision No. C15-0766, issued July 27, 2015, in Proceeding No. 13A-0686EG, the Commission determined to re-evaluate goals and credit payments for Public Service's ISOC program in the Company's next DSM strategic issues filing, which is this proceeding.

100. As explained above, the Settlement proposes three major structural changes to the ISOC offerings. First, the Settling Parties propose to grandfather for ten years, the Within Ten-Minute offering for customers enrolled for the current ISOC rate prior to December 31, 2018. Those customers will be subject to a foundational credit level of $15.97/kW month. Second, the Settling Parties request approval of a new Within-Ten Minute offering with a

foundational credit of $11.27/kW-month. Further, Public Service agrees to re-evaluate this new credit as part of the Company's next strategic issues proceeding. Third, the Settlement proposes the elimination of the current Within One-Hour offering.

101. We agree with the Settling Parties that it is reasonable and appropriate to implement the Settlement's ISOC provisions. The weight of the evidence in this proceeding supports the agreed-upon provisions.

K. Approval of Other Terms of Settlement

102. The Settlement offers a full and complete resolution of all issues raised in this proceeding. The Settlement is therefore comprehensive and contains provisions beyond the contested matters discussed in this Decision.

103. With the exception of the issues discussed above, CEO and NRDC/Sierra do not oppose the Settlement.

104. We conclude that the evidence offered in this proceeding supports the approval, without modification, of the terms of the Settlement not otherwise addressed here. The Settlement is therefore approved in part, with the modifications set forth above.

L. Next DSM Strategic Issues Filing

105. A future strategic issues proceeding will be necessary to establish goals, reevaluate financial incentives, and address other matters that influence Public Service's electric and natural gas DSM. We direct Public Service to file another DSM strategic issues proceeding by March 1, 2022.

II. ORDER

A. The Commission Orders That:

1. The Joint Motion to Approve Settlement Agreement filed by Public Service Company of Colorado (Public Service) on February 26, 2018, is granted, in part, consistent with the discussion above.

2. The Corrected Non-Unanimous Comprehensive Settlement Agreement (Settlement) filed by Public Service on February 26, 2018 is approved as modified by this Decision, consistent with the discussion above.

3. The Application for Approval of a Number of Strategic Issues Relating to Its Demand Side Management (DSM) Plan filed by Public Service on July 3, 2017, is granted, as modified by the Settlement and by this Decision, consistent with the discussion above.

4. Public Service's existing natural gas energy efficiency portfolio is approved and any changes to this portfolio shall be addressed through Public Service's next DSM Plan filing pursuant to § 40-3.2-103, C.R.S., and 4 *Code of Colorado Regulations* 723-4-4750, *et seq*.

5. Public Service shall submit a biennial DSM Plan for its electric and natural gas DSM for 2019 and 2020, consistent with the terms of the Settlement as modified by this Decision.

6. Public Service shall file an advice letter on not less than ten days' notice to modify its electric Demand Side Management Cost Adjustment tariff to reflect the incentive structure adopted by this Decision.

7. Public Service shall file an advice letter on not less than ten days' notice to modify its Interruptible Service Option Credit consistent with the discussion above.

8. Public Service shall commence a DSM strategic issues proceeding to examine potential adjustments to its savings goals and changes to its DSM financial incentive mechanism no later than March 31, 2022.

9. The 20-day period provided for in § 40-6-114(1), C.R.S., in which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

10. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING April 11, 2018.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

FRANCES A. KONCILJA

Commissioner

CHAIRMAN JEFFREY P. ACKERMANN
SPECIALLY CONCURRING.

COMMISSIONER WENDY M. MOSER
DISSENTING.

III. COMMISSIONER WENDY M. MOSER DISSENTING

A. Electric Energy Efficiency

1. This proceeding is not about whether **e**nergy **e**fficiency is good or bad, **and** this proceeding **is not** about **e**nergy **e**fficiency at **a**ny **c**ost. However, the majority **basically**

pronounced exactly that**:** the more energy efficiency and demand side management **(DSM) programs**, the better, regardless of the cost! **I**n support of its pronouncement, the majority cites **a** prior Commission decision**.** Frankly, the majority is wrong.

2. The primary question that we, as a Commission, should be asking is "what is a reasonable cost to impose upon customers**"** in order to provide three things:

(1) Cost effective DSM programs that are most likely to encourage customers to reduce their consumption of energy;

(2) Reasonably priced incentives that will encourage the utility to invest in the DSM programs; and

(3) A reasonable annual budget for the implementation of these DSM programs.

3. Instead of asking these three questions, the majority claims that, since the enactment of § 40-3.2-104(5), C.R.S., in 2007, past Commissions have expected Public Service Company of Colorado (Public Service) to "aggressively pursue all cost-effective DSM" and accordingly, the current Commission is also required to order Public Service to "aggressively pursue all cost-effective DSM." There is nothing in the statutes that requires a "pursuit of all cost-effective DSM" and most certainly not to the exclusion of everything else that should reasonably be considered. The statutes, as set forth in §§ 40-3.2-104(1), 104 (2)(a), and 104 (5), C.R.S., state:

a. **§ 40-3.2-104(1), C.R.S.:** "It is the policy of the state of Colorado that a primary goal of electric utility least cost resource planning is to minimize the net present value of revenue requirements. **….**" **This statute does not say** "engage in as much DSM as one possibly can**, disregarding the costs**."

b. § 40-3.2-104(2)(a), C.R.S.: "The commission shall establish energy savings and peak demand reduction goals to be achieved by an investor-owned electric utility, taking into account the utility's cost-effective demand-side management potential, the need for electricity resources, the benefits of demand-side management investments, and other factors as determined by the commission." This statute does not say "engage in as much DSM as one possibly can, disregarding the costs."

c. § 40-3.2-105(5), C.R.S.: "The Commission shall allow an opportunity for a utility's investments in cost effective DSM programs to be more profitable to the utility than any other utility investment that is not already subject to special incentives. In complying with this subsection (5), the commission shall consider, without limitation, the following incentive mechanisms, which shall take into consideration the performance of the DSM program:…." The statute then lists a number of incentive mechanisms for the Commission to consider, as well as allowing the utility to adopt other incentive mechanisms that the Commission deems appropriate. As with the other statutes, this statute also does not say "engage in as much DSM as one possibly can, disregarding the costs."

4. Section 40-3-101(1), C.R.S., provides that "(a)ll charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable." It is we, this Commission**,** not a past **C**ommission, that is entrusted with the supervision and regulation of all **our** public utilities, including rates and regulations established by earlier contract.[38] Prior Commission**'s** polic**ies** or decisions are not binding upon us, but the statutes most certainly are.[39]

5. We must keep in mind that **"**the primary purpose of the Public Utilities Commission is to ensure that the rates charged are not excessive or unjustly discriminatory.**"**[40] Because customers will pay for these **DSM** programs in their rates (whether the **customers** take advantage of them or not), we have an obligation as a Commission to set a reasonable budget with reasonable goals. Accordingly, for purposes of this proceeding, the statutory directive is to agree upon a reasonable cost to impose upon customers in order to provide the three things referenced above:

a. cost-effective DSM programs that will encourage customers to **reduce** their consumption of energy;

---

[38] "The Commission has exclusive regulatory powers over all public utilities." *Denver & S. Pac. Ry. v. City of Englewood,* 62 Colo. 229, 161 P.2d 703 (Colo. 1916), writ of error dismissed, 248 U.S. 294, 39 S. Ct. 100, 63 L. Ed. 253 (1919).

[39] "The public utilities commission (PUC) derives its authority wholly from constitutional and statutory provisions and possesses only such powers as are thereby conferred." *Snell v. Pub. Utils. Comm'n*, 108 Colo. 162, 114 P.2d 563 (1935).

[40] *Cottrell v. City & County of Denver*, 636 P.2d 933 (Colo. 1982).

b. reasonably priced incentives that will encourage the utility to invest in DSM programs; and

c. a reasonable annual budget for the implementation of the DSM programs.

6. Our statutory directive is NOT to expect Public Service to "aggressively pursue all cost-effective DSM." Rather, our statutory directive is to determine what is fair, just, and reasonable. This determination should be based upon evidentiary facts, calculations, known factors, relationships between known factors, and adjustments which may affect the relationship between known factors[41] for our purposes of approving electric energy savings and demand reduction goals for the years 2019 through 2023.

7. The majority justifies its decision[42] to modify the Settlement Agreement to require Public Service to pursue all possible cost-effective DSM by claiming that cost-effective electric DSM results in a variety of benefits to the Company's ratepayers and the state as a whole, including economic benefits for DSM program participants who realize bill savings, as well as cost savings for all ratepayers because "saving energy is less expensive than building new generation resources." In order for this last statement to be relevant, or even true, there are many assumed facts that need to materialize, and there is no guarantee that either the projected "savings" or the associated "avoided costs" will actually occur. In fact, the above statement by the majority might be true **IF** customers reduce their energy usage to the point where the amount of electricity needed at any time of the day or night, 365 days a year, by all of the utility's customers (including future customers) is equal to or less than the exact amount of electricity that can be supplied by the existing generation capacity and that said generation never needs repairs nor replacement. Under this utopian scenario, then yes, there might not be a need to build new generation.

[41] *See*, *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973).
[42] *See* p. 21, ¶ 72.

8. The facts are this: there is already sufficient generation to supply all "existing" Colorado customers with their desired electricity needs. However, as our state's population and economy grows and customers increase their electricity needs (*i.e.,* new customers, or existing customers adding more "electric" devices, *i.e.,* appliances, cell phones, tablets, etc. to the home or business), there is likely to be a need at some point for more generating capacity. In addition, generation power plants need repairs and eventually replacement. Also, many Colorado residents are asking for the retirement of existing generation plants to be replaced with new "lower carbon emitting" generation, in order to reduce carbon emissions statewide.

9. Given these factors, one might ask "well then, where do the DSM savings and avoided costs come from?" When customers reduce their electricity usage, the utility does not need to "run" all their generation sources. When generating plants are not running, they are not burning fuel and fuel is an expense that is passed on to customers on their bill. Accordingly, the savings and the avoided costs are in the form of fuel savings. If the generating plants are not running, they do not need fuel.[43] If the generating plants run less, then they may also need less maintenance (theoretically), and maintenance is also a cost that is passed on to customers. Thus, when customers engage in DSM programs that reduce their electricity needs, they decrease the "run times" of the generating plants, thus saving fuel and possibly avoiding higher maintenance or replacement costs of the power generation plants. These savings translate into lower bills than what customers may have otherwise been charged.[44] Further, when one calculates how much energy was saved by customers that take advantage of the DSM, one can thus equate that

[43] One can think of it as owning a car. You have paid, or are paying, for your car that is sitting in the garage and you are required to have insurance for it, but it is only when you drive the car, that you incur additional costs, *i.e.*, your car needs fuel to run. By not running your car, you are "avoiding costs." If your car breaks down, it needs to be repaired or replaced. The same is true of power generation.

[44] Customers benefit directly from lower energy usage since each customer has a "usage component" to their monthly utility bill, such that the less energy one uses, the more likely it is that the monthly bill will be less.

"energy saved" to the amount of energy that would have required the need to build a power plant. Notwithstanding, one cannot use that information to decide whether a new power plant actually gets built.

10. Not every customer will participate in energy efficiency programs, but every customer will see the cost for these programs as part of their electric bill; hence, the significance of the overall "budget" approved in this proceeding.

a. The Settlement Agreement provided for a $78 million budget annually over a five-year period (2019 to 2023), for a base total of $390 million. This base amount also allowed spending up to an additional 10 percent over this amount (another $39 million) to be invested in energy efficiency programs with a presumption of prudence for Public Service in terms of cost recovery (resulting in a possible total of $429 million to be spent on Energy Efficiency programs).

b. Unfortunately, the majority was not satisfied with the agreed upon settlement amount. Under its self-established mantra of pursuing "all cost-effective electric DSM" the Commission majority increased the annual "$78 million dollar annually for 5 years" budget by changing the 10 percent provision to be a 20 percent provision. This change allows Public Service to spend an additional $15.6 million dollars annually (a total base budget of $93.6 million per year), resulting in a total spend of $468 million. This cost will be paid for by ratepayers.

c. Per the majority, these program costs are "not a burden on ratepayers but instead save ratepayers money."[45] I disagree; money "out of pocket" is a burden because the annual program budget is recovered upfront through Public Service's Demand Side Management Cost Adjustment. The "allowed over-spending" is recovered on top of that the following year.

d. Further, there is no way for the majority to prove that enough of the ratepayers' money was actually saved in order to avoid building a power plant.

11. Savings and avoided costs <u>might</u> be the result for customers who engage in these programs and actively monitor and manage their energy practices. However, savings and avoided costs are not returned to customers in the form of a check, nor do they show up as a credit on the

[45] Decision, pp. 22-23, ¶ 75.

bill, nor as a refund of money already paid. The savings and avoided costs equate to "take these actions and your energy bill should be less than what it otherwise would have been, all other things being equal." Or, as the majority claims, take these actions because "[spending money for] saving energy is less expensive than building new generation resources."[46] There is no dispute that the "calculations" show that enough energy "might" be saved to allow the company to avoid building additional generation. The key word here is "might". Theoretical calculations of avoided costs stand in stark contrast to the fact that the budget dollars to finance the programs are very real and will be assessed on customers' bills; real money that each customer will actually pay. Contrast that to the fact that avoided costs are simply that: costs the customers do not pay, *i.e.,* costs that do not require "cash out of pocket."

12. When dealing in the realms of theory and uncertainty, I would suggest that when the Commission has a settlement agreement before it that includes customers and consumer representatives as signatories, the most logical choice, and in this case, the one choice that is most clearly in the public interest, is the choice to approve the Settlement Agreement.

B. Demand Response

13. The majority correctly found the proposed demand response goals to be reasonable, but then inexplicably found that a demand response incentive is neither appropriate nor necessary at this time. Demand response is targeted to large customers. Large customers actually can provide substantial DSM benefits by engaging in demand response programs. By removing the incentive for Public Service to engage in demand response programs, the majority decision undermines the very intent and purpose of the programs, since large customers are the

[46] Decision, p. 21, ¶ 72.

most likely group of customers, if any, to provide the savings and avoided costs that might actually prevent additional generation from being built.

14. Further, allowing an incentive for demand response is the one area that the statute clearly does address, and it addresses it as a "shall" not a "may", meaning the Commission lacks the discretion to make incentives optional. Section 40-3.2-104(5), C.R.S., provides that "[t]he commission shall allow an opportunity for a utility's investments in cost-effective DSM programs to be more profitable to the utility…..the commission **shall** consider, without limitation, the following incentive mechanisms …."(emphasis added.) Not allowing an incentive lacks a basis in both fact and law.

C. Settlement

15. By our own rules, we, as a Commission, are to encourage settlements: Rule 1408, 4 *Code of Colorado Regulations* (CCR) 723-1 of the Rules of Practice and Procedure. We have an "almost unanimous" settlement in the matter before us. On February 26, 2018, 12 of the 19 parties in this proceeding submitted a Settlement Agreement that answered the above requisite question. The parties that reached agreement are: the Office of Consumer Counsel (OCC), Staff of the Commission, Western Resource Advocates, Climax Molybdenum Company (large business customer), the Energy Efficiency Business Coalition, Energy Outreach Colorado (EOC) (representing low-income customers), CF&I Steel LP (large business customer), City of Boulder, Open Energy Efficiency, the Southwest Energy Efficiency Project, Colorado Energy Consumers, and Public Service. With the exception of some specific issues, Colorado Energy Office (CEO) and Sierra Club and National Resources Defense Council (NRDC/Sierra) did not oppose the Settlement Agreement. In addition, two other parties, Wal-Mart Stores, Inc., and the City and County of Denver, were unopposed to the Settlement Agreement.

16. It is notable that the OCC, which is the party charged by statute with representing the consumers (the people who pay the bills and pay for these energy efficiency programs), the EOC representing low-income customers (low-income customers also pay the bills and pay for these programs), the technical experts of the Staff of the Commission, the intervening parties that are business customers (these entities pay the bills and pay for these programs), the intervening parties that are in the business of energy efficiency, and the regulated utility, were all parties to the Settlement Agreement.

17. Also, it is notable that only three active litigants opposed portions of the Settlement Agreement: the Colorado Energy Office (despite the fact that reducing energy costs for consumers is one of its key components to its mission and vision), the Colorado Renewable Energy Society and NRDC/Sierra, together as a single party.

18. As set forth in Commission Rule 1408, 4 CCR 723-1, we, as a Commission, are to also encourage parties to provide their comprehensive reasoning with respect to the terms of the settlement that was reached. It is undisputed that the settling parties in this matter provided comprehensive reasoning regarding why the Settlement Agreement was in the public interest and should be adopted by this Commission.

19. The majority would have been better served to adopt the Settlement Agreement, rather than substitute their judgment for that of the large number of parties who signed onto the extensive and carefully analyzed Settlement Agreement, especially when the energy efficiency experts and the ones most knowledgeable about the facts are the parties appearing before the Commission.

20. In conclusion, I find that the evidence offered in this proceeding supports the approval, without modification, of the terms of the Settlement Agreement as originally submitted to the Commission.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

WENDY M. MOSER
____
Commissioner

IV. CHAIRMAN JEFFREY P. ACKERMANN SPECIALLY CONCURRING

A. Electric Efficiency (Demand-Side Management) as a Resource

1. It is often challenging, when discussing electric energy efficiency within the context of electric utility regulation, to know where to begin, let alone, where to focus. For energy efficiency has multiple motivations and purposes.

2. The regulated utilities, pursuant to § 40-3.2-104(2)(a), C.R.S., are statutorily required to pursue "…energy savings and peak demand reduction goals…" In addition, the practice since the statute was first enacted in 2007 has been to exceed the statutory minimum. Thus, it is not a matter of whether the utility should pursue demand-side management (DSM). At issue is how much DSM to pursue, reflected in the goals, the associated budget, and ultimately the impact upon ratepayers.

3. Pursuant to state statutes and the Commission's own practices, all DSM is required to meet cost-effectiveness standards, reflected in benefits exceeding costs when calculated using a modified Total Resource Cost test. Further, the bulk of DSM expenses affect a ratepayer's bill through the DSM Cost Adjustment (DSMCA). These costs generally appear on

the ratepayer's utility bill before the benefits fully materialize, in the form of reduced future utility investments in generation. This is due to the ongoing practice of allowing the electric utilities to recover DSM costs contemporaneously with the expenses being incurred, while the DSM benefits accrue to the system over the lifespan of the DSM investments, which is often seven to ten years or longer. If utilities amortized DSM investments, the DSM impact via the DSMCA would be noticeably less.

4. Even so, while amortizing DSM investments would be a positive step toward addressing the initial ratepayer impact, it would not address the concern expressed by the minority opinion that the DSM expenses authorized in this proceeding are excessive. To address that opinion one must look at the larger role and purpose of DSM, within the context of statutory directives to the Commission, and ultimately DSM's role within electric resource planning.

5. As cited by my colleague, "It is the policy of the state of Colorado that a primary goal of electric utility least-cost resource planning is to minimize the net present value of revenue requirements."[47] Yet, this statutory framing of the purpose of electric resource planning is incomplete without also including this citation:[48]

> The commission shall give the fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies in its consideration of generation acquisitions for electric utilities, bearing in mind the beneficial contributions such technologies make to Colorado's energy security, economic prosperity, insulation from fuel price increases, and environmental protection…

6. Also, while § 40-2-123(1)(a), C.R.S., directs the Commission to be cognizant of the myriad societal benefits of DSM, (to "…bearing in mind the beneficial contributions…" of energy-efficient technologies..), the General Assembly goes even further to make sure that the

[47] § 40-3.2-104(1), C.R.S.

[48] § 40-2-123(1)(a), C.R.S.

Commission keeps in mind this macro perspective on DSM. Specifically, § 40-3.2-101, C.R.S., [Legislative Declaration], reinforces this perspective:

> The general assembly hereby finds, determines, and declares that cost-effective natural gas and electricity demand-side management programs will save money for consumers and utilities and protect Colorado's environment. The general assembly further finds, determines, and declares that providing funding mechanisms to encourage Colorado's public utilities to reduce emissions or air pollutants and to increase energy efficiency are matters of statewide concern and that the public interest is served by providing such funding mechanisms. Such efforts will result in an improvement in the quality of life and health of Colorado citizens and an increase in the attractiveness of Colorado as a place to live and conduct business.

7. Further, the sentence that concludes § 40-2-123(1)(a), C.R.S., provides the most succinct legislative statement to the Commission specifically concerning what is a reasonable level of investment in DSM:

> The commission shall consider utility investments in energy efficiency to be an acceptable use of ratepayer moneys.

8. Thus, the discussion of reasonableness concerning investment in DSM begins with recognizing that the Commission is clearly and strongly directed by the General Assembly to pursue DSM investments ("…give the fullest possible consideration to…"). This is followed by a further directive to recognize the secondary benefits associated with DSM ("…bearing in mind the beneficial contributions…," since DSM "…will save money for consumers and utilities…"). Moreover, all of this is to occur from a premise that DSM investments are "…an acceptable use of ratepayer moneys." Taken together, it is clear from where the motivation to aggressively pursue all cost-effective DSM has arisen.

9. Viewing DSM as a resource within the context of electric resource planning further reinforces the positive value of DSM investments, particularly from the perspective of the ratepayers. As stated in the Commission's Electric Resource Planning rules: "It is the policy of the state of Colorado that a primary goal of electric utility resource planning is to minimize the

net present value of revenue requirements."[49] Further, Section 3610(b)(II) of these same rules, (Assessment of Need for Additional Resources) states that "…the Commission shall permit the utility to implement cost-effective demand-side resources to reduce the need for additional resources that would otherwise be met through a competitive acquisition process…" Thus, it is reasonable to conclude that all cost-effective DSM that reduces future resource needs is the best method to minimize net present value of revenue requirements.[50] In short, cost-effective DSM investments is the best way from the ratepayer's perspective to prepare for future resource needs. DSM has proven its ability to be counted upon as a resource in utility practice.

10. Therefore, while acknowledging the constraints upon DSM discussed during this proceeding, as long as there are future resource needs and a reasonable assurance the utility can achieve additional DSM cost-effectively, DSM investments should be aggressively pursued. For aggressively pursuing DSM yields benefits to ratepayers and society while concurrently reducing the utility's (and ultimately the ratepayers') cost of meeting future needs.

B. Applying "Fairness" to DSM

11. It is also important, when discussing DSM, to understand how the concept of "fairness" is meant to be applied to DSM. While this Commission and all past Commissions overseeing DSM planning have expressed a commitment to assuring that all customers have reasonable access to the DSM services offered, that is only one aspect of DSM "fairness." Only

[49] 4 CCR 723-3, Section 3601.

[50] It is important to note that electric resource planning is both "art" and "science." It is based upon rigorous assessment of future demands for electricity, *i.e.,* load growth, which becomes the identified "resource need" against which new resources are compared. Yet, no projection of future need has ever been perfectly accurate; that is the nature of forecasting. That same imprecision applies to quantifying the impact of DSM investments against the resource need. Based upon decades of experience and analysis, the accuracy is steadily increasing, yielding the ability for DSM to be considered a resource within the context of resource planning, equivalent to supply-side resources.

viewing fairness from this perspective can actually distort one's understanding of the purpose of DSM.

12. A key value of DSM is its contribution to addressing future resource needs. When a DSM investment displaces or defers an investment in generating plant or related fuel and operating expenses, all ratepayers benefit, regardless of whose specific end use was reduced by the DSM investment. To think otherwise is equivalent to thinking that the benefits (and costs) of the utility investing in new generation are not shared by all.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN
____
Chairman