

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

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IN THE MATTER OF THE)
APPLICATION OF PUBLIC SERVICE)
COMPANY OF COLORADO FOR)
APPROVAL OF THE PPA)
TERMINATION AGREEMENT WITH) **PROCEEDING NO. 20A-XXXXE**
KEPCO SOLAR OF ALAMOSA, LLC)
AND AUTHORITY TO ESTABLISH A)
REGULATORY ASSET AND RECOVER)
COSTS ASSOCIATED WITH THE PPA)
TERMINATION AGREEMENT)
THROUGH THE ELECTRIC)
COMMODITY ADJUSTMENT)

**VERIFIED APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO
FOR APPROVAL OF THE PPA TERMINATION AGREEMENT WITH KEPCO
SOLAR OF ALAMOSA, LLC AND AUTHORITY TO ESTABLISH A REGULATORY
ASSET AND RECOVER COSTS ASSOCIATED WITH THE PPA TERMINATION
AGREEMENT THROUGH THE ELECTRIC COMMODITY ADJUSTMENT**

Pursuant to Colorado Public Utilities Commission (“Commission”) Rules 1303 and 3002 (XIX), 4 CCR 723-3, Public Service Company of Colorado (“Public Service” or the “Company”) seeks Commission approval to terminate the Solar Energy Purchase Agreement with KEPCO Solar of Alamosa, LLC (“KEPCO PPA” or “PPA”) (formerly known as Cogentrix of Alamosa, LLC, (“Cogentrix”)) and to recover the costs that are necessary to execute this transaction as reflected herein and in its concurrently-filed Direct Testimony and Attachments. Specifically, Public Service requests that the Commission:

- Approve Public Service’s request to terminate the KEPCO PPA and make the associated Termination Payment (\$41 million)¹ pursuant to the terms of the PPA Termination Agreement between KEPCO Solar of Alamosa LLC (“KEPCO”) and Public Service, executed June 30, 2020 (“Termination Agreement”) and included as Attachment BAT-1 to the Direct Testimony of Ms. Brooke A. Trammell, finding the Termination Agreement and associated Termination Payment reasonable and in the public interest;
- Consistent with the provisions of the Termination Agreement, approve Public Service’s proposal to: (1) create a regulatory asset in the amount of the Termination Payment (\$41 million) amortized over 11 years, approximating the remaining term of the PPA; (2) earn a return on the unamortized balance of the regulatory asset allocated to Public Service’s retail customers at the Company’s authorized weighted average cost of capital (“WACC”); and (3) recover the retail revenue requirement associated with the Termination Payment (“Termination Payment Revenue Requirement”) through its Electric Commodity Adjustment (“ECA”) as proposed, beginning with the next quarterly ECA adjustment filed after receipt of the final Commission decision in this case. If the Commission denies cost recovery of the Termination Payment Revenue Requirement through the ECA, the Company may consider cost recovery through a General Rate Schedule Adjustment (“GRSA”) to be an acceptable alternative;

¹ This termination payment is also referred to in this Application as the “Termination Payment.”

- Approve Public Service's proposed modifications to its ECA tariff, COLO. PUC No. 8 Electric, as reflected in Attachments APF-3 and APF-4, the Redline and Clean Versions respectively, to Mr. Arthur P. Freitas' Direct Testimony, if the Commission approves cost recovery through the ECA; and
- Authorize the Company to implement its proposed ECA tariff changes on not less than two business days' notice through a compliance advice letter filing following the Commission's final decision on the Company's application in this proceeding.

Public Service notes that the Termination Agreement provides that in order for the transaction to move forward, Public Service must find the Commission's approval of this Application acceptable with regard to cost recovery.² Thus, to the extent the Commission modifies Public Service's cost recovery proposal, Public Service will inform the Commission of its move forward on the termination or not via a notice.

If the Commission does not approve the Company's request to terminate the KEPCO PPA, the existing administration of the KEPCO PPA will continue, and Public Service will continue to adhere to any Commission approvals as they stand today.

Public Service further requests that if this Application is unopposed, or if no hearing is requested or all hearing requests are later withdrawn, the Commission grant the Application without a hearing.

² See Attachment BAT-1, Termination Agreement at ¶ 6.

Public Service additionally requests the Commission issue a final order in this proceeding within the time limits prescribed by § 40-6-109.5 (1), C.R.S.,³ which would result in a final Commission decision well before September 7, 2021, which is the “Outside Final Approval Date” specified in the Termination Agreement. If Commission approval has not been obtained by this date, the Termination Agreement will terminate automatically and the KEPCO PPA will continue in full force and effect.

Public Service is submitting with its Application the Direct Testimony and Attachments of Ms. Brooke A. Trammell and Mr. Arthur P. Freitas. In further support of this Application, Public Service states as follows:

I. Background on the KEPCO PPA

1. As further described in Ms. Trammell’s Direct Testimony, pursuant to the Commission’s Phase II Decision in the Company’s 2007 Electric Resource Plan Proceeding (“2007 ERP”),⁴ in June 2010, Public Service entered into the KEPCO PPA with Cogentrix to acquire the energy from the 30 megawatt (“MW”) highly concentrating photovoltaic (“HCPV”) solar facility (“Facility,” also known as the Alamosa Solar Generating Facility) located near Alamosa, Colorado, which began commercial operation in 2012. The KEPCO PPA has a twenty-year term expiring March 31, 2032.

³ § 40-6-109.5 (1), C.R.S. provides as follows: “[w]henver an application of any kind is filed with the commission and is accompanied by the applicant's supporting testimony or a detailed summary of the supporting testimony, together with exhibits, if any, the commission shall issue its decision on the application no later than one hundred twenty days after the application is deemed complete as prescribed by rules promulgated by the commission. If the commission finds that additional time is required, it may, by separate order, extend the time for decision by an additional period not to exceed one hundred thirty days.”

⁴ Decision No. C09-1257 in Proceeding No. 07A-447E.

2. Under the KEPCO PPA, KEPCO is required to deliver at least 85 percent of the Committed Solar Energy⁵ from the Facility in any rolling twelve-month period. Section 7.1 of the PPA provides that “[i]n no event will [the] Company be responsible to accept or pay for any Solar Energy in a given hour greater than 30 MWh.” Section 8.1 of the KEPCO PPA further requires the Company to purchase up to 115 percent of the Committed Solar Energy of the Facility.

3. The KEPCO PPA sets forth the Committed Solar Energy and Solar Energy Payment Rate (by Commercial Operation Year) that KEPCO is contracted to deliver during each year of the twenty-year term of the PPA. The Solar Energy Payment Rate started at \$127.50/MWh in the first Commercial Operation Year and escalates at one percent each year for the twenty-year term of the PPA to a Solar Energy Payment Rate of \$154.03/MWh at Commercial Operation Year twenty. Commercial Operation years run from April 1 through March 31. For the Commercial Operation Year commencing April 1, 2021, the energy payment rate will be \$139.45/MWh.⁶

4. To finance the KEPCO Facility, in September 2011, the Department of Energy (“DOE”) issued a \$90.6 million loan guarantee. According to the DOE, its loan guarantee program supports the deployment of commercial technologies along with innovative technologies that avoid, reduce, or sequester greenhouse gas emissions.⁷

⁵ See Attachment BAT-2. As defined in the PPA, “Committed Solar Energy” for any period means “the megawatt-hours of Solar Energy committed to be delivered to the Company by Seller from the Facility in such period, set forth in Exhibit K. For any period that does not coincide with a Commercial Operation Year, Committed Solar Energy shall be calculated as the month-weighted sum of the Committed Solar Energy falling in each of the two Commercial Operation Years using expected monthly generation provide data, set forth in Exhibit L.”

⁶ See Attachment BAT-2, Appendix K.

⁷ U.S. Department of Energy Loan Programs Office, *Alamosa Project Summary*, <https://www.energy.gov/lpo/alamosa> (last visited Aug. 22, 2020).

5. In the 2007 ERP, the Commission designated all resources utilizing HCPV technology as a § 40-2-123, C.R.S (“Section 123”) resource for purposes of that proceeding⁸ and found that the two percent retail rate impact on the amounts collected from customers to pay for eligible energy resources did not apply to Section 123 resources, meaning that the costs for the KEPCO PPA are recovered through the ECA as opposed to through the Renewable Energy Standard Adjustment (“RESA”).⁹ The KEPCO PPA represents the Company’s first and only Section 123 resource.

6. As explained in Ms. Trammell’s Direct Testimony, the KEPCO HCPV technology incorporates an innovative dual-axis tracking system that utilizes a hydraulic motor to rotate and tilt the solar cells throughout the day so the surface of the solar panel maintains an optimal angle with the sun’s movement to maximize its direct sun exposure and, as a result, its electricity production. The “multi-junction” solar cells are made of different semi-conductor materials and are capable of absorbing different wavelengths of sunlight, which was expected to make them more efficient at converting sunlight into electricity than the then-existing traditional fixed-mount, single-junction solar cells. It was estimated at the time that the multi-junction solar cells would nearly double the efficiency of more traditional PV panels used in areas with high amounts of direct sunlight.

7. At the time of its development (i.e., 2011-2012), the Facility was one of the first utility-scale HCPV projects in the United States of America (“U.S.”) and the largest HCPV generation facility in the world.¹⁰ This is the only facility KEPCO owns in the U.S.

⁸ Decision No. C09-1257 at ¶ 66 and Ordering ¶ 6 in Proceeding No. 07A-447E.

⁹ Decision No. C08-0559 at ¶ 80 in Proceeding No. 07A-447E.

¹⁰ U.S. Department of Energy Loan Programs Office, *Alamosa Project Summary*, <https://www.energy.gov/lpo/alamosa> (last visited Aug. 22, 2020).

with HCPV technology. Due in part to the use of this technology, in its 2007 ERP Phase II Decision, the Commission designated HCPV as a Section 123 resource.

8. § 40-2-123, C.R.S requires the Commission to “give the fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies” in addressing a utility’s proposed resource plan. In its Phase I Decision in the 2007 ERP, the Commission adopted the following definition of Section 123 resources:¹¹

An eligible energy resource will be considered a new clean energy, or energy efficient technology, or a demonstration project if it is clean and incorporates one or more technologies, representing a substantial portion of its overall installed cost, that have not been regularly commercially demonstrated, up to the point in time that the resource is formally bid, or if not bid, acquired.

9. The Commission’s requirement that Section 123 resources must not have “been regularly commercially demonstrated” is consistent with the legislative objective of § 40-2-123, C.R.S. to support utility investment in new and innovative clean energy resources.

10. Such special treatment and heightened consideration of Section 123 resources is needed to support the development and adoption of new clean energy technologies for multiple reasons. First, such technologies may be more costly than other alternatives and may not be selected under a least-cost resource planning approach. Second, inherent in the nature of new technologies that have not been commercially demonstrated is the possibility that such technologies may fail or otherwise not deliver as

¹¹ Decision No. C08-0929 at ¶370 in Proceeding No. 07A-447E.

expected. Unfortunately, that is what ultimately happened with the HCPV technology at the Facility.

II. **Background on the Termination Agreement**

11. As further described in Ms. Trammell's Direct Testimony, in early 2019, KEPCO contacted the Company to discuss concerns that it was at risk of falling below the 85 percent Committed Solar Energy requirement of the PPA. The Facility had, and has since, experienced degradation due to failure of the HCPV components of the Facility. Additional details regarding the performance issues are provided as Confidential Attachment BAT-3 to Ms. Trammell's Direct Testimony.

12. KEPCO has represented that it is not feasible for KEPCO to repower the Facility with replacement HCPV technology. Amonix, the manufacturer of the HCPV equipment at the Facility is no longer in business. Using another manufacturer to repair or replace the damaged HCPV equipment is not a commercially viable option for KEPCO given the much greater capital investment and maintenance needs associated with HCPV equipment over conventional, non-HCPV solar.¹²

13. In the event the Termination Agreement does not move forward, KEPCO has proposed a cure plan that would involve repowering the Facility with conventional solar PV to address the performance issues and achieve the required output allowed under the KEPCO PPA. To meet the minimum 95 percent delivered energy requirement over the twelve-month cure period, the Facility would need to achieve a much higher level of production—likely several months at the 115 percent maximum output Public Service is

¹² See Ennomotive, *The Future of Solar Energy: High Concentrated Photovoltaic (CPV) Cells*, <https://www.ennomotive.com/future-of-solar-energy/> (last visited Aug. 22, 2020).

required to acquire under the PPA—to average 95 percent energy delivery over twelve months. Public Service expects that achieving this level of production with conventional solar PV would likely require ‘overbuilding’ the site. As explained in Ms. Trammell’s Direct Testimony, Public Service is concerned that proceeding with KEPCO’s proposed cure plan would result in increased ongoing costs to customers under the KEPCO PPA.

14. After diligently considering the alternatives, including KEPCO’s proposed cure plan as well as potential litigation, Public Service worked with KEPCO to reach a fair and mutually agreeable solution that will allow the KEPCO PPA to terminate and result in material savings for Public Service’s customers: the Termination Agreement. The Termination Agreement is estimated to save Public Service’s retail customers approximately \$38 million as presented in Mr. Freitas’ Direct Testimony and provided as Attachment APF-2.

15. While Public Service does not take the early termination of a power purchase agreement lightly and understands that pursuing innovative technologies and fostering opportunities for the development of such technologies will be key to a low-to-no carbon and reduced greenhouse gas emissions future, Public Service supports this proposed transaction in consideration of the material savings expected to result for Public Service’s customers, as well as the unique operational circumstances of the Facility and the available alternatives to the transaction.

III. Key Terms of the Termination Agreement

16. Public Service and KEPCO entered into the Termination Agreement, provided as Attachment BAT-1 to Ms. Trammell’s Direct Testimony, on June 30, 2020. As explained in Ms. Trammell’s Direct Testimony, the Termination Agreement will resolve

all disputes regarding the performance issues of the Facility and allow the KEPCO PPA to terminate, discharging Public Service of any further obligations under the KEPCO PPA beyond those provided in the Termination Agreement, and resulting in material savings for Public Service customers.¹³

17. The Termination Agreement, and Public Service's obligations under the Termination Agreement, are conditioned on the issuance of the requisite FERC and Commission approvals for the transaction to proceed.¹⁴

18. The Termination Agreement requires Public Service to make a Termination Payment of \$41 million. Ms. Trammell supports the reasonableness of this amount and explains that implementing the Termination Agreement is in the public interest because it fairly balances the interests of Public Service and its customers, KEPCO, and the DOE given the unique circumstances of this transaction. Because of the loan guaranty KEPCO received from the DOE described above, the Termination Agreement would require Public Service to direct the Termination Payment to the DOE for the benefit of KEPCO.

19. The Termination Agreement provides that in order for the transaction to move forward, Public Service must find the Commission's approval of this Application acceptable with regard to its request to recover the Termination Payment Revenue Requirement by: (1) creating a regulatory asset in the amount of the Termination Payment, to be amortized over 11 years; (2) permitting Public Service to earn a return on

¹³ Attachment BAT-1, Termination Agreement at ¶ 8 (c) provides that the second sentence of Article 2 of the KEPCO PPA (provided as Attachment BAT-2 to Ms. Trammell's Direct Testimony) shall survive the termination of the PPA. This means that Public Service will remain obligated to pay for any energy produced under the KEPCO PPA until it is terminated.

¹⁴ Attachment BAT-1, Termination Agreement at ¶ 5 (setting forth necessary conditions for FERC approval) and ¶ 6 (setting forth necessary conditions for Commission approval).

that asset at its authorized WACC; and (3) recovering the retail revenue requirement associated with the Termination Payment through the ECA or through another mechanism acceptable to Public Service in its sole discretion.¹⁵ As noted above, while the Company is requesting recovery of the Termination Payment Revenue Requirement through the ECA, the Company may consider cost recovery through a GRSA to be an acceptable alternative.

20. Public Service is contemporaneously seeking FERC approval of revisions to its Assured Power and Energy Requirements Tariff necessary to recover the applicable portion of the Termination Payment from Public Service's wholesale production customers.¹⁶

21. If Public Service receives the requisite FERC and Commission approvals for the transaction to proceed by September 7, 2021 as set forth in the Termination Agreement, the Termination Agreement will close, and the Termination Payment will become due and payable not less than five and not more than twenty business days after the issuance of both the requisite FERC and Commission approvals.¹⁷

22. If Public Service does not receive the requisite FERC and Commission approvals for the transaction to proceed by September 7, 2021, including acceptable cost recovery conditions for Public Service as set forth in the Termination Agreement, the Termination Agreement terminates, Public Service will not be obligated to pay the Termination Payment, and the KEPCO PPA will continue to remain in full force and effect.

¹⁵ See Attachment BAT-1, Termination Agreement at ¶ 6.

¹⁶ See Attachment BAT-1, Termination Agreement at ¶ 5.

¹⁷ See Attachment BAT-1, Termination Agreement at ¶ 8.

IV. Public Service's Cost Recovery Proposal

23. As supported by Ms. Trammell and Mr. Freitas in their Direct Testimonies, Public Service seeks Commission approval to create a regulatory asset for the \$41 million Termination Payment, to amortize the regulatory asset over a period of 11 years to align with the remaining term of the PPA, to earn a return on the unamortized balance of the regulatory asset allocated to Public Service's retail customers at the Company's authorized WACC, and recover the Termination Payment Revenue Requirement through the ECA.

24. Ms. Trammell explains why Public Service's cost recovery proposals are essential to the consummation of the transaction, and Mr. Freitas presents the Termination Payment Revenue Requirement, provides a cost-benefit analysis to show the overall savings that are estimated to result from the Termination Agreement, and provides an estimated bill impact showing how these expected savings would be passed on to the various customer classes.

V. Additional Information Required by Commission Rule 3002

In support hereof and in accordance with 4 CCR 723-3 Rule, 3002(b), Public Service respectfully states as follows:

25. The Name and Address of Applicant required by Rule 3002(b)(I). Public Service is an operating public utility subject to the jurisdiction of this Commission, engaged, *inter alia*, in the generation, purchase, transmission, distribution, and sale of electricity in various areas in the State of Colorado. The name and address of Public Service is:

Public Service Company of Colorado
1800 Larimer Street, Suite 1100
Denver, CO 80202-5533

26. Name Under Which Applicant Provides Service in Colorado required by Rule 3002(b)(II). All operations conducted by the Company in Colorado are conducted under the name of Public Service Company of Colorado, under the trade name of Xcel Energy.

27. Representatives to Whom Inquiries Concerning the Applicant Should be made required by Rule 3002(b)(III). Please send copies of all notices, pleadings, correspondence, and other documents regarding this filing to the undersigned counsel, as well as the following:

Brooke A. Trammell
Regional Vice President
Xcel Energy Services, Inc.
1800 Larimer Street, Suite 1100
Denver, CO 80202
Telephone: 303-571-7377
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28. Agreement to Comply with Rule 3002(b)(IV)-(VI). Public Service agrees to answer all questions propounded by the Commission or its Staff concerning this

Application. The Commission or any member of its Staff may inspect Public Service's books and records as part of the investigation into this Application. Public Service understands that if any portion of this Application is found to be false or to contain material misrepresentations, any authorities granted pursuant to the Application may be revoked upon Commission order.

29. Description of Existing Operations and General Colorado Service Area required by Rule 3002(b)(VIII). Public Service's existing operations and general service areas in Colorado are set forth in the Company's tariffs on file with the Commission.

30. Location of Hearing required by Rule 3002(b)(X). Public Service requests that this Application be granted without hearing pursuant to Commission Rule 1403. However, if a hearing is held, Public Service requests that it be held in Denver, Colorado.

31. Acknowledgment required by Rule 3002(b)(XI)(D). Public Service acknowledges that the Company has read and agrees to abide by the provisions of Rules 3002(b)(XI)(A) through (C).

32. Statement Under Oath required by Rule 3002(b)(XII). Brooke A. Trammell, Regional Vice President of Rates and Regulatory Affairs, states under penalty of perjury that the contents of the Application are true, accurate, and correct to the best of her knowledge. Ms. Trammell's verification is attached to this Application.

33. Information Required by Rule 3002(c). Pursuant to Rules 1310(a) and 3002(c), Public Service hereby incorporates by reference the following information, which is currently on file with the Commission in Proceeding No. 06M-525EG:
- a. A copy of Public Service's Amended Articles of Incorporation, as last filed on October 3, 2006.
 - b. The name, business address and title of each of Public Service's officers and directors, as last filed on March 31, 2020.
 - c. The names and addresses of affiliated companies that conduct business with Public Service, as last filed on March 31, 2020.
 - d. The name and address of Public Service's agent for service of process, as last filed on March 31, 2020.
 - e. A copy of Public Service's most recent audited balance sheet, income statement, and statement of retained earnings, as last filed on March 31, 2020.

VI. Noticing

34. In addition to the formal notice of this Application provided by the Commission pursuant to § 40-6-108 (2), C.R.S. and Rule 1206, Public Service will post the Application and public versions of the supporting testimony on the Xcel Energy website. Additionally, within twenty days of this filing, Public Service will notify customers of this Application through providing a notice in the *Denver Post* for two consecutive weeks on a weekday to include:
- a. The name and address of the utility;

- b. A statement that the utility has filed an application with the Commission for approval to terminate the KEPCO PPA, make the associated Termination Payment, and recover the retail revenue requirement associated with the Termination Payment through the ECA;
- c. Public Service's estimated cumulative savings as well as the estimated total monthly bill impact to our retail electric customers utilizing existing annualized rates for the various customers classes;
- d. A statement that the Application is available for inspection on Public Service's website and on the Colorado Public Utilities Commission's e-filing system;
- e. A statement that any person may file with the Commission a written objection to the Application, or may file to intervene to participate as a party, and an explanation that a mere objection without an intervention shall not be adequate to permit participation as a party; and
- f. A statement that written objections must be filed by the time listed in the notice separately given the by the Commission.

VII. Conclusion

WHEREFORE, Public Service respectfully requests that the Commission issue an order granting its Application and the requested relief as described herein and in its concurrently-filed Direct Testimony.

Dated this 8th Day of September 2020.

Respectfully submitted,

By: /s/ Emily A. Giraldo
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**ATTORNEYS FOR PUBLIC SERVICE
COMPANY OF COLORADO**