

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

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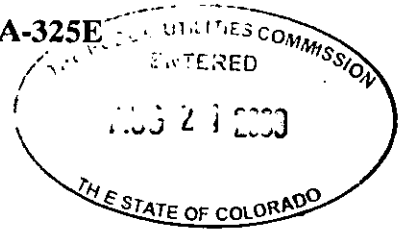
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IN THE MATTER OF THE APPLICATION OF )  
TRI-STATE GENERATION AND )  
TRANSMISSION ASSOCIATION, INC., )  
(A) FOR A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY FOR THE )  
SAN LUIS VALLEY TO CALUMET TO )  
COMANCHE TRANSMISSION PROJECT, )  
(B) FOR SPECIFIC FINDINGS WITH )  
RESPECT TO EMF AND NOISE, AND (C) FOR )  
APPROVAL OF OWNERSHIP INTEREST )  
TRANSFER AS NEEDED WHEN PROJECT IS )  
COMPLETED )

DOCKET NO. 09A-324E

IN THE MATTER OF THE APPLICATION OF )  
PUBLIC SERVICE COMPANY OF )  
COLORADO (A) FOR A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY )  
FOR THE SAN LUIS VALLEY TO CALUMET )  
TO COMANCHE TRANSMISSION PROJECT, )  
(B) FOR SPECIFIC FINDINGS WITH )  
RESPECT TO EMF AND NOISE, AND (C) FOR )  
APPROVAL OF OWNERSHIP INTEREST )  
TRANSFER AS NEEDED WHEN PROJECT IS )  
COMPLETED )

DOCKET NO. 09A-325E



**PUBLIC SERVICE COMPANY OF COLORADO'S REQUEST  
FOR CLARIFICATION OF DECISION NO. C09-0886**

Public Service Company of Colorado ("Public Service" or the "Company") hereby submits its Request for Clarification of Decision No. C09-0886 (Mailed August 12, 2009). For the reasons expressed below, Public Service seeks clarification that, except with respect to the 180-day timeline in SB07-100 and despite general references in Decision No. C09-0886 that could be interpreted to the contrary, the provisions of SB07-100 continue to apply to Public Service's application to construct the San Luis Valley – Calumet – Comanche Transmission Project (the "Project"). Specifically, Public Service requests clarification that a CPCN can be granted for this Project, as contemplated by SB07-100, in advance of the negotiation and

execution of any contract for specific generation in Energy Resource Zones 4 and/or 5. Without such clarification, it is unlikely that this Project could be constructed in time to allow Public Service to contract for power from bidders in Energy Resource Zones 4 and 5 who offered to supply Public Service, in response to the Company's 2009 All Source RFP, renewable generation in 2013 from newly constructed facilities.

Senate Bill 07-100 was enacted to solve the very "chicken-and-egg" problem that has bedeviled transmission projects in the past, namely renewable energy projects would not be accepted due to lack of transmission and transmission would not be built due to absence of contracts to purchase or CPCNs to build renewable generation. This problem is created because the planning, permitting and construction cycle is longer for the transmission line than it is for the renewable generation that needs the new transmission line. With the passage of SB07-100, the Colorado Legislature attempted to rectify this timing problem by setting forth the requirement that utilities designate Energy Resource Zones ("ERZs") where transmission constraints hinder the delivery of electricity to Colorado consumers, the development of new electric generation facilities to serve Colorado consumers, or both, and requiring that utilities develop plans for the construction or expansion of transmission facilities necessary to deliver electric power consistent with the timing of the development of beneficial energy resources located in or near such zones. SB07-100, in effect, mandates that energy resource zones be accessed by transmission so that generation can be constructed in the zones; in other words, if the transmission is constructed the generation can then follow.

In this Consolidated Docket No. 09A-324E and 09A-325E, Trinchera Ranch asked for a legal ruling that SB07-100 does not apply to the Project. Commission Decision No. C09-0886 suggested that SB07-100 does not apply to the Project for the purposes of the 180-day time limit for reviewing utility CPCN applications. But it is unclear whether the Commission intended in

Decision No. C09-0886 to rule that the policies of SB07-100 to encourage utilities to build transmission to underserved energy resource zones in advance of generation also did not apply to Public Service's CPCN application.

Because of the ambiguity created by Commission Decision No. C09-0886 concerning the application of SB07-100, Public Service respectfully requests that the Commission clarify its legal ruling. Did the Commission intend to rule that the SB100 policies do not apply to this Project, or did the Commission merely intend to rule that the 180-day time limit for application review would not apply to this Docket. If the Commission only intended to address the time limit for CPCN review and not to negate the policy mandates of SB07-100, Public Service respectfully requests that the Commission clarify that, as contemplated by SB07-100, Public Service need not have specific approved generation resources that would need this transmission line, or specific power purchase agreements for generation that would need this transmission line, as a pre-condition for the grant of a CPCN for the Project. Public Service needs the CPCN for this Project prior to the dates when we anticipate we will be able to execute contracts with the generation resources that are in the Preferred Portfolio submitted for Commission review in Docket No. 07A-447E.

## I. INTRODUCTION

Decision No. C09-0886 addressed the Motion for Determinations of Law and Requests for Shortened Response Time, Leave to File a Reply, and Expedited Ruling filed by Blanca Ranch Holdings, LLC, and Trinchera Ranch Holdings, LLC (collectively, Trinchera Ranch). Trinchera Ranch argued in its Motion that § 40-2-126, C.R.S., and the expedited 180-day timeline provided for in subsection (4) of the statute does not apply to this consolidated docket, because Public Service did not file its application with a current SB 100 report for a

simultaneous review by the Commission, and did not publish a notice of its application in a newspaper of general circulation pursuant to the Pawnee-Smoky Hill Transmission Line docket.

In its Decision, the Commission agreed with Trinchera Ranch that Public Service's 2008 SB07-100 Report did not state or suggest that it satisfies the reporting requirements of § 40-2-126, C.R.S., and stated that a formal SB 100 report would follow on October 31, 2009. In addition, the Commission noted that its proceeding that followed the 2008 Report differed markedly from the one that followed the 2007 SB 100 Report with respect to the opportunity for interested parties to provide comments and participate. The Commission found that the status of the 2008 Report vis-à-vis SB07-100 "was ambiguous, at best," and held at ¶ 25:

We therefore conclude that § 40-2-126, C.R.S., and the 180-day expedited timeline provided for in § 40-2-126(4), C.R.S., does **not** apply to this consolidated docket because the proposed San Luis Valley-Calumet-Comanche transmission project was not discussed in the formal 2007 SB 100 report. Instead, § 40-6-109.5(1), C.R.S., dictates the deadline by which the Commission must issue a final order on the merits.

The Commission also indicated its concern about the failure of Public Service to publish notice of the application pursuant to a Stipulation approved by the Commission in the Pawnee – Smoky Hill Transmission Line docket. See ¶ 26 of Decision.

Public Service is not asking the Commission to reconsider its ruling with respect to the time limits for this Docket. Public Service seeks clarification of those portions of Decision No. C09-0886 that could imply or indicate that § 40-2-126, C.R.S., has no application whatsoever to this consolidated docket. In Footnote 4 of Decision No. C09-0886, the Commission indicated that the statute may apply, at least in part, to this application by noting that the Decision "do[es] not address whether Public Service complied with the simultaneous review requirement *or whether the proposed transmission line is necessary to deliver electric power consistent with the timing of the development of beneficial energy resources located near the designated*

*energy resource zones*” (emphasis added). It is the latter issue for which Public Service seeks clarification, namely, whether the Company can meet its burden of proof in this docket and obtain a CPCN by meeting the standards of SB07-100 (i.e., demonstrating the need for the Project by showing that it is necessary to deliver electric power consistent with the timing of the development of beneficial energy resources located in or near ERZs 4 and 5) or whether the SB07-100 policies do not apply to this CPCN application in any respect.<sup>1</sup>

## II. DISCUSSION

Section 40-2-126 provides as follows:

(1) As used in this section, “energy resource zone” means a geographic area in which *transmission constraints hinder the delivery of electricity to Colorado consumers, the development of new electric generation facilities to serve Colorado consumers, or both.*

(2) On or before October 31 of each odd-numbered year, commencing in 2007, each Colorado electric utility subject to rate regulation by the commission shall:

(a) Designate energy resource zones;

(b) *Develop plans for the construction or expansion of transmission facilities necessary to deliver electric power consistent with the timing of the development of beneficial energy resources located in or near such zones;*

(c) Consider how transmission can be provided to encourage local ownership of renewable energy facilities, whether through renewable energy cooperatives as provided in section 7-56-210, C.R.S., or otherwise; and

(d) Submit proposed plans, designations, and applications for certificates of public convenience and necessity to the commission for simultaneous review pursuant to subsection (3) of this section.

(3) The commission shall approve a utility's application for a certificate of public convenience and necessity for the construction or expansion of transmission facilities pursuant to paragraph (b) of subsection (2) of this section if the commission finds that:

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<sup>1</sup> To the extent the Commission believes there is no ambiguity in its Decision No. C09-0886, and thus no “clarification” is needed, Public Service requests reconsideration of the Decision as outlined herein.

(a) The construction or expansion is required *to ensure the reliable delivery of electricity to Colorado consumers or to enable the utility to meet the renewable energy standards set forth in section 40-2-124*; and

(b) That the present *or future* public convenience and necessity require such construction or expansion.

(4) Notwithstanding any other provision of law, in any application for a certificate of public convenience and necessity for the construction or expansion of transmission facilities pursuant to paragraph (b) of subsection (2) of this section, the commission shall issue a final order within one hundred eighty days after the application is filed. If the commission does not issue a final order within that period, the application shall be deemed approved.

(Emphasis added.)

Public Service understands the Commission's ruling that subsection (4) of § 40-2-126, C.R.S., i.e., the 180-day timeline, does not apply to this matter because the Commission wanted to ensure that the due process rights of all parties were protected after notice was given in a newspaper of general circulation. However, the Commission should clarify that the remainder of the statute – which promotes the development of transmission for beneficial energy resources – continues to be applicable to this proceeding.

SB 07-100 was enacted by the Colorado Legislature in recognition that transmission needed to be constructed to energy resource zones *in advance* of the proposed construction of specific generation. The language in the statute mandates that utilities develop plans for the construction or expansion of transmission facilities necessary to deliver electric power consistent with the timing of the development of beneficial energy resources located in or near Energy Resource Zones – ERZs where transmission constraints hinder the delivery of electricity to Colorado consumers, the development of new electric generation facilities to serve Colorado consumers, or both.

Much of the evidence that Public Service will present in this consolidated docket relates to the Company's efforts to meet SB07-100. Public Service has filed testimony explaining that the Project was identified in its 2008 SB07-100 Report as "High-1" priority, meaning it is a top-priority project to relieve transmission constraints and advance backbone transmission facilities to connect the Denver metro area with the energy resource zones where wind and solar resources are located. Further, any significant new development of new electric generation capacity in ERZs 4 and 5 requires expansion of transmission capacity between southern Colorado and the Denver metro area. Public Service explains why the Project meets the SB07-100 criteria to alleviate transmission constraints in ERZs 4 and 5, which are prime locations for the development of solar-powered generation according to analyses conducted by the National Renewable Energy Laboratory and the Colorado Governor's Energy Office. ERZ 4 has been identified as the premier site for solar energy development potential, and ERZ 5 will allow for wind, solar and other beneficial resource additions. In SB07-100 meetings, stakeholders indicated loud and clear that they wanted access to be able to offer more solar generation projects in the San Luis Valley (ERZ 4), and that developers expressed interest in the Wind Generation Development Area 8<sup>2</sup> and additional quality solar projects that exist in ERZ 5. Further, under the renewable energy standard rules, § 40-2-124, C.R.S., by the year 2020, Public Service will be required to have 20% of its energy sales from renewable energy resources, and four percent of that must be from solar systems. The Company also has filed supplemental testimony based on its 2009 All-Source Solicitation 120-Day Report that indicates its preferred portfolio in the 2007 Colorado Resource Plan docket. Specifically, Public Service identified the general amount of electric generation included in its preferred portfolio by Energy Resource Zone, which shows

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<sup>2</sup> Generation Development Area 8 as defined in the SB08-091 Task Force Report, Connecting Colorado Renewable Resources to the Market. *See* <http://www.colorado.gov/energy/index.php?/resources/category/publications/> for such publication.

that Public Service's preferred portfolio includes 280-310 MW of potential generation in ERZ 4, and 200-250 MW of potential generation in ERZ 5. While existing transmission can only accommodate 125 MW of generation in the San Luis Valley area, the Project can accommodate 1500 MW of new generation in ERZs 4 and 5.

Accordingly, Public Service seeks clarification from the Commission that Public Service can establish need for the Project by showing that additional transmission is needed to serve beneficial energy resources in ERZs 4 and 5, and that this transmission is necessary to deliver electric power consistent with the timing of the development of beneficial energy resources located in or near such zones. In addition, the Commission should clearly state that Public Service does not need to prove that it has contracted with, or will contract with, specific generation resources that require the Project in order to show need for the Project. The fact of the matter is that Public Service will not have any specific project contracts in hand prior to the date when a CPCN must be granted in order to construct this transmission line for new generation resources in Energy Resource Zones 4 and 5 with 2013 in-service dates. Public Service believes that the General Assembly enacted SB07-100 to address this very situation. Public Service believes that the clarifications that we request by this Motion are not only consistent with the language of § 40-2-126, C.R.S., but also with the Legislative Declaration in SB 07-100, which states:

**Legislative declaration.** (1) The general assembly finds, determines, and declares that:

(a) A robust electric transmission system is critical to ensuring the reliability of electric power for Colorado's citizens;

(b) Colorado's vibrant economy and high quality of life depend on the continued availability of clean, affordable, reliable electricity; and

(c) Therefore, Colorado utilities should continually evaluate the adequacy of electric transmission facilities throughout the state and should be



*encouraged to promptly and efficiently improve such infrastructure* as required to meet the state's existing *and future* energy needs.

(Emphasis added.) These clarifications are also in harmony with § 40-5-101, which begins: “No public utility shall begin the construction of a new facility, plant, or system or of any extension of its facility, plant, or system without first having obtained from the commission a certificate that the present *or future* public convenience and necessity require or will require such construction” (emphasis added). In order to promptly and efficiently plan, develop, and build transmission to Energy Resource Zones for the benefit of its customers and the State of Colorado, Public Service must be allowed to obtain CPCNs for transmission lines in advance of having definitive contracts for generation, by showing that transmission is needed so that beneficial energy resources can be constructed in the energy resource zone.


### CONCLUSION

WHEREFORE, Public Service requests the following clarifications to Commission Decision C09-0886:

- 1) Decision No. C09-0886 addresses only the 180-day timeline in subsection (4) of § 40-2-126, C.R.S., and the Commission did not intend to rule that the standards for constructing transmission that are set forth in SB07-100 do not apply to this Project;
- 2) Public Service can establish need for the Project under § 40-2-126 or § 40-5-101, C.R.S. by showing that additional transmission is needed to serve beneficial energy resources in ERZs 4 and 5; and
- 3) Public Service does not need to prove that it has contracted with, or will contract with, specific generation resources that require the Project in order to show need for the Project under either Project under either § 40-2-126 or § 40-5-101, C.R.S.

Dated this 20th day of August, 2009.

Respectfully submitted,

By: 

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ATTORNEYS FOR PUBLIC SERVICE  
COMPANY OF COLORADO

**CERTIFICATE OF SERVICE**

**09A-324E and 09A-325E**

I hereby certify that the original and seven (7) copies of the foregoing PUBLIC SERVICE COMPANY OF COLORADO'S REQUEST FOR CLARIFICATION OF DECISION NO. C09-0886 were hand-delivered this 20th day of August, 2009, to:

Doug Dean, Executive Director  
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and copies were hand delivered or served via United States Mail or served via email on all Parties on this service list.

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