

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0046E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF A SHORT-TERM POWER PURCHASE AGREEMENT, AND AMENDMENTS TO OTHER SUCH AGREEMENTS, EXTENDING EXISTING GENERATION RESOURCES INCLUDING RIDGE CREST WIND, ARAPAHOE, BRUSH 2, AND BRUSH 4.

**INTERIM COMMISSION DECISION
DEEMING APPLICATION COMPLETE,
SETTING MATTER FOR HEARING,
ESTABLISHING PARTIES,
DIRECTING PUBLIC SERVICE TO FILE
SUPPLEMENTAL DIRECT TESTIMONY, AND
ORDERING THE FILING OF A PROPOSED
PROCEDURAL SCHEDULE**

Mailed Date: March 10, 2023
Adopted Date: March 8, 2023

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I. BY THE COMMISSION**A. Statement**

1. On January 26, 2023, Public Service Company of Colorado (Public Service or the Company) filed an application for approval of a short-term power purchase agreement (PPA) and for approval of amendments to three other PPAs (Application). Public Service also filed with the Application a Motion for Limited Waivers and Variances of Commission Rule 3615 and Commission Decision C06-1379 (Waiver Motion) and a Motion for Extraordinary Protection of Highly Confidential Information (Protection Motion).

2. By this Decision, the Commission sets the Application for hearing and establishes the parties in this Proceeding. We grant the requests for permissive intervention filed by Sierra Club, Onward Energy Management LLC (Onward), and the Colorado Independent Energy Association (CIEA). We further acknowledge the notices of intervention of right filed by Staff of the Colorado Public Utilities Commission (Staff), the Colorado Office of the Utility Consumer Advocate (UCA), and the Colorado Energy Office (CEO).

3. We direct Public Service to confer with the other parties in this Proceeding to develop and file a procedural schedule no later March 17, 2023

4. We further set an extended deadline for the established parties to file any response to the Protection Motion. The Commission establishes a five-day response time from the effective date of this Decision.

5. Finally, in accordance with the discussion below, the Waiver Motion will be addressed by separate decision.

B. Public Service's Application

6. Public Service states in the Application that the Company does not currently have sufficient accredited capacity for the period 2023 to 2025, because new capacity proposed by certain independent power producers (IPPs) has not come online as was planned for in the Company's 2016 Electric Resource Plan (ERP) in Proceeding No. 16A-0369E. Public Service states that the four PPAs subject to the Application are necessary to help alleviate this near-term capacity shortfall by preserving 322 MW of capacity over the years starting in 2023 and extending through 2025 or 2026. The Company further seeks findings that the PPA execution and contract terms are prudent, reasonable, and in the public interest.

7. Public Service is specifically seeking approval of the following:

- A one-year extension (December 31, 2022 through December 31, 2023) to the existing PPA between Public Service and Ridge Crest Wind Partners, LLC for the 30 MW Ridge Crest wind facility;
- A one-year extension (December 31, 2023 through December 31, 2024), plus an option for an additional one-year extension (January 1, 2025 through December 31, 2025), to the existing PPA between Public Service and SWG Arapahoe, LLC, for the 119 MW Arapahoe natural gas facility (Arapahoe 5,6,7);
- A three-year extension (January 1, 2024 through December 31, 2026) to the existing PPA between Public Service and BIV Generation Company, LLC for the 147 MW Brush 4 natural gas facility; and
- A three-year PPA (January 15, 2023 through December 31, 2025) extending the recently expired PPA between Public Service and AltaGas Brush Energy Inc. for the 75 MW Brush 2 natural gas facility.

8. Public Service filed Direct Testimony of three witness in support of the Application.

Public Service argues that the four PPAs, as amended and extended, result in commercially reasonable terms that represent the most favorable outcome achievable with the respective counterparties in a competitive and resource limited market.

9. In the Waiver Motion filed with the Application, Public Service seeks a waiver of the applicable provisions of Rule 3615 of the Commission's ERP Rules, 4 *Code of Colorado Regulations* (CCR) 723-3-3600, *et seq.*, related to acquiring more than 30 MW of capacity outside of an approved resource plan. The Company is also seeking a waiver from the standard PPA prudence review process associated with its Purchased Capacity Cost Adjustment (PCCA) rate rider as established in a previous Commission decision (Decision No. C06-1379). The Company states that the evaluation of the prudence of the Company's execution and contract terms of these four PPAs would occur in this Proceeding instead of a subsequent PCCA-related case.

10. In terms of procedures, Public Service requests that the Commission hear this proceeding *en banc* and issue its decision on the Application in or around the summer of 2023. Public Service further seeks to restrict access to three categories of documents and information specifically described in its Protection Motion, including: (1) the four short-term PPA contracts; (2) affidavits of authorized representatives for three PPA counterparties; and (3) any information protected by a confidentiality clause of an existing PPA.

C. Interventions and Parties in this Proceeding

11. The Commission issued a Notice of Application Filed on January 27, 2023. The notice set a 30-day intervention period through February 27, 2023, with an additional seven days for Staff to file its intervention pleading.

12. On February 17, 2023, Sierra Club filed a Motion to Intervene. Sierra Club states it is a national non-profit environmental organization dedicated to the protection of public health and the environment. It moves to intervene on behalf of itself and the 17,698 Sierra Club members who live in Colorado, including 11,780 members who are electric and/or gas customers of Public Service. Sierra Club maintains a Colorado office with national and state chapter staff. Sierra Club

states it seeks to intervene to protect its members' direct and tangible interests in this Proceeding, including health, environmental, and economic interests, that would be affected by the approval of these PPAs. Sierra Club explains it has thousands of members who purchase electricity from Public Service and would pay the costs associated with these PPAs. Sierra Club further explains its members have interests in the outdoor air quality impacts of this Proceeding, noting that three of the four PPAs are with gas-fired, combined-cycle plants, and it has members who live, work, and recreate downwind of the gas plants.

13. On February 17, 2023, Onward filed a Motion to Intervene. Onward states that it is an IPP that currently operates 56 wind, solar, and natural gas generation projects in 22 states across the country. Onward operates three power facilities in Colorado (the Arapahoe Plant in Denver, Fountain Valley Plant in Fountain, and Comanche Solar in Pueblo County). Onward maintains, as the current owner and operator of the Arapahoe Plant at issue in this Proceeding, it has a direct and substantial pecuniary interest in the Proceeding. Onward states it seeks to intervene to protect its business interests. Onward states no other party can provide the perspective of the owner and operator of the Arapahoe Plant. Onward adds that it has specific, detailed knowledge about the Arapahoe Plant, its components, operating history, site condition, and capabilities that no other party possesses. Finally, Onward states it has a business development strategy and perspective that may differ from Public Service and is the only entity suited to represent its strategy and perspectives.

14. On February 22, 2023, UCA filed its notice of intervention of right with a request for hearing. UCA represents the public interest and the specific interests of Public Service's residential, small business, and agricultural customers under § 40-6.5-104, C.R.S. UCA states that the Commission could approve the PPAs for the projects that provide power in 2023 (*i.e.*, Ridge

Crest and Brush 2), but UCA urges the Commission to reject the PPAs that start in 2024 (*i.e.*, Arapahoe and Brush 4), because projects for 2024 can be acquired in Public Service's current resource solicitation for its 2021 ERP and Clean Energy Plan (ERP/CEP solicitation) in Proceeding No. 21A-0141E. UCA further states its intention to examine: (1) whether the PPA prices are reasonable; (2) the causes of the need for short-term PPAs and whether Public Service acted prudently in its activities leading up to the filing of its Application; and (3) whether the Company has pursued all reasonable avenues for additional capacity.

15. On February 24, 2023, CIEA filed a Motion to Intervene. CIEA states that it is a trade association of IPPs whose mission is to support policies and practices that provide for the competitive acquisition of utility generation resources. CIEA states it advocates for policies that encourage transparency and fairness in resource acquisition. CIEA notes, since its founding in 1991, it has participated in most, if not all, ERP processes of regulated utilities in Colorado, in related rulemakings, and in proceedings involving transmission development. CIEA states its advocacy in prior proceedings has led to the Commission's adoption of important policy and technical positions which, in turn, have led to significant benefits in competitive acquisition, and PPAs more generally, that have inured to Colorado ratepayers. CIEA maintains it is uniquely positioned to provide industry information to the Commission regarding the effect of the extended PPAs on competition and ratepayers. CIEA states, with member IPPs that currently operate or seek to operate electric generating resources in Colorado, it has a specific interest in the competitive bidding of renewable resources and market participation by IPPs. CIEA states the tangible and pecuniary interests of its IPP members may therefore directly be substantially impacted by any decisions in this Proceeding, including but not limited to, the Commission's acceptance of short-term PPA extensions at various rates.

16. On February 27, 2023, CEO filed a notice of intervention of right. CEO is housed within the Governor's Office and carries out its statutory mission, in part, by intervening in Commission proceedings where it can bring a unique perspective representing the interests of the Governor's Office and the State of Colorado. CEO does not explicitly request a hearing in this matter, but it raises many of the same issues that UCA put forward in its notices of intervention by right. CEO asks, for example, whether any proposals included in the Application are duplicated by or overlap with those that may be presented for approval in Phase II of the Company's ongoing ERP/CEP proceeding. CEO also asks how and whether the environmental justice provisions approved in Phase I of the Company's ERP/CEP proceeding apply to the requested relief and, more generally, how the Application aligns with public policy requirements, including supporting Colorado's transition to a more equitable, low-carbon, and clean energy economy and protecting the environment and public health.

17. On March 1, 2023, Staff filed its notice of intervention of right with a request for a hearing in this matter. Staff raising several issues with the Application, asking whether: (1) the reliance on periodic PPA extensions are acceptable or contradictory to the Commission's preference for competitive resource acquisitions; (2) unknown costs and portfolio adequacy impacts are created by these short-term PPAs on the current RFP bid process, such as the potential for discounting the ability of acceptable bids provided in the ERP/CEP solicitation to provide all or part of the resource needs the Company has identified in the Application; (3) the PPA extending through 2026 (Brush 4) eliminates eligible ERP/CEP solicitation bids that otherwise meet the Company's announced needs; (4) the proposed PPAs otherwise influence resource needs through 2026 and change the assumptions shared with bidders in the ERP/CEP solicitation RFP bid information; and (5) the revised assumptions with respect to the Company's resource needs to be

used in this Proceeding will be consistent in the evaluation of both these short-term PPAs and accepted ERP/CEP solicitation bids.

18. Pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1401(b) of the Commission's Rules of Practice and Procedure, no decision is required in response to appropriately filed notices of intervention by right. We acknowledge the notices of intervention of right, and that Staff, UCA, and CEO are parties to this Proceeding.

19. Rule 4 CCR 723-1-1401(c) of the Commission's Rules of Practice and Procedure sets forth the standard for permissive intervention and states, in relevant part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.

20. Further, Rule 4 CCR 723-1-1401(c) requires that a movant who is a "residential consumer, agricultural consumer, or small business consumer" must discuss in the motion whether the distinct interest of the consumer is either not adequately represented by the UCA or inconsistent with other classes of consumers represented by the UCA. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., the UCA has a statutory mandate to represent the interest of the Company's residential, small business, and agricultural customers in Colorado.

21. We find that each entity seeking permissive intervention has sufficiently demonstrated that this Proceeding may substantially affect its pecuniary or tangible interests, as is required by Rule 1401(c). Each also has demonstrated that its interests would not otherwise be

adequately represented. Therefore, we grant the requests for permissive intervention. Sierra Club, Onward, and CIEA are parties to this Proceeding.

D. Procedural Steps

22. For purposes of § 40-6-109.5, C.R.S., the Commission deems the Application complete. Staff filed no deficiency letter with respect to the Application pursuant to Rule 1303 of the Rules of Practice and Procedure, 4 CCR 723-1, and the Application appears to meet the requirements prescribed by Commission rules and decisions.

23. The Commission finds good cause to set the Application for hearing. We will hear this matter *en banc*. We will establish procedures for the hearing by separate decision after scheduling the hearing dates and otherwise establishing a procedural schedule. We further conclude that it is necessary to address the merits of the Waiver Motion after the hearing in this matter.

24. We agree with the Company that the resource adequacy issues, as described by the Company, that the four PPAs subject to the Application are intended to address are serious and that expedited procedures are therefore warranted. We further understand the regional nature of capacity shortfalls in the near-term and the potential impacts of extreme weather occurring during peak periods in 2023, 2024, and 2025. We further appreciate that by presenting shorter-term PPAs instead of utility-owned resources that involve long-term customer commitments to address the capacity shortfall, the issues raised in this Proceeding have likely been narrowed and significantly simplified.

25. Nevertheless, we share the concerns of the parties as raised in their intervention pleadings with respect to the impact of the potential approval of the Application on the Company's

ERP/CEP solicitation in Proceeding No. 21A-0141E. We also have interest in understanding more about the Company's analysis of demand side impacts and resources as they relate to the near-term capacity shortfall addressed in the Application, given that the resource adequacy concerns described by Public Service have been known well before the filing of its Application. We are further charged with considering the impacts of our decision-making on disproportionately impacted communities with respect to resource acquisitions.¹ Given these concerns and interests, we find good cause to direct Public Service to develop and file Supplemental Direct Testimony to ensure the viability of expedited procedures.

26. The Supplemental Direct Testimony shall:

- Regarding demand reductions resulting from the implementation of time-of-use (TOU) rates, provide additional information as to the analysis Public Service has conducted to date, and the results, and the additional analysis expected to occur.² The Company shall identify the learning objectives of this analysis and describe the timing of additional results and conclusions of its continuing analysis of TOU impacts after each peak season as more customers take service under the TOU rates. The Company shall provide further details regarding the sample size, the sample's representativeness of its larger service territory, and the data quality for the peak months in 2022.
- Explain fully and in detail what demand response (DR) solutions were considered in comparison to the supply-side solutions presented in the Application, including the evaluation of new and more robust DR solutions, including the comparative cost and timelines associated with implementing DR. Public Service shall specifically address the viability of fast-tracking existing plans to implement new DR initiatives, such as increasing targeted behind the meter energy storage incentives, the Demand Response Management System (DRMS)³ and the request for proposals (RFP) for third-party DR aggregation capabilities, to prioritize adding enhanced DR capabilities on the system for the upcoming periods of concern.⁴

¹ See § 40-2-108(3), C.R.S.

² Public Service states that it is reviewing TOU impacts and "valuable peak demand reductions." Hearing Exhibit 101, Ihle Direct, p. 51.

³ See Appendix A to Decision No. R23-0080, issued February 2, 2023, Proceeding No. 22A-0189E, pp. 10-11. and Proceeding No. 22A-0189E, Hearing Exhibit 103, Chacon Direct, p. 27.

⁴ "The Company agrees to initiate an RFP in the first half of 2023 to solicit ideas from vendors for new Demand Response offerings that achieve peak demand reduction by residential customers with advanced meters

- Explain in detail the exact interaction of the resource extensions subject to the Application with the ERP/CEP solicitation in Proceeding No. 21A-0141E⁵, with specific focus on: (1) the overlap of these PPAs and the resource acquisition period for the ERP/CEP solicitation—from 2024 and beyond; (2) the capacity shortfalls caused by the resources out of the 2016 ERP that failed to be developed to identify the extent to which those shortfalls, in each year shown out to 2030, will be addressed by the resources acquired pursuant to the ERP/CEP solicitation;⁶ and (3) the potential ability to fast-track certain bid resources from the ERP/CEP, such as bid storage resources, that could be brought online in the near-term. The Company shall also address whether any changes will be made to the ERP/CEP modeling or bid evaluation and selection considerations as a result of a potential approval of the Application.
- Address the geographic relationship of the four generation facilities subject to the Application with any disproportionately impacted communities by providing a map showing the proximity of the plants to these communities, as well as a discussion on any impacts on localized levels of pollutants or other expected impacts of extended operations within those communities.

27. In order to establish an appropriate procedural schedule for this Proceeding, we direct Public Service to confer with the parties in this Proceeding to develop and to file a consensus proposal. Public Service shall file either a motion to approve a consensus schedule or a report that sets forth the Company's proposed procedural schedule and the intervening parties' support for or objections to that schedule. The procedural schedule pleading shall be submitted no later than March 17, 2023.

28. With the establishment of the parties in this Proceeding, we find good cause to set an extended deadline for the established parties to respond to the Protection Motion. The Commission establishes a five-day response time from the effective date of this Decision.

through a pay-for-performance, technology neutral approach.” Unopposed Settlement Agreement, filed by Public Service on December 2, 2022 in Proceeding No. 22A-0315G, pp. 12-13.

⁵ Decision No. C22-0459, issued August 3, 2022, Proceeding No. 21A-0141E.

⁶ For example, Public Service states that the Company terminated the PPA with the developer of the Front-Range Midway project in January 2023. Hearing Exhibit 101, Ihle Direct, p. 28.

II. ORDER

A. It Is Ordered That:

1. For purposes of § 40-6-109.5, C.R.S., the Commission deems complete the Application for Approval of a Short-Term Power Purchase Agreement and Amendments to Other Such Agreements, Extending Existing Generation Resources Including Ridge Crest Wind, Arapahoe, Brush 2, and Brush 4 (Application) filed by Public Service Company of Colorado (Public Service) on January 26, 2023.

2. The Application is set for hearing before the Commission *en banc*.

3. The Motion to Intervene filed by Sierra Club on February 17, 2023, is granted.

4. The Motion to Intervene filed by Onward Energy Management LLC on February 17, 2023, is granted.

5. The Motion to Intervene filed by the Colorado Independent Energy Association on February 24, 2023, is granted.

6. The parties to this Proceeding are: Public Service, Staff of the Colorado Public Utilities Commission, the Colorado Office of the Utility Consumer Advocate, the Colorado Energy Office, Sierra Club, Onward Energy Management LLC, and the Colorado Independent Energy Association.

7. Public Service shall confer with the parties and file a proposed procedural schedule no later than March 17, 2023, consistent with the discussion above.

8. Public Service shall file Supplemental Direct Testimony, consistent with the discussion above.

9. Responses to the Motion for Extraordinary Protection of Highly Confidential Information filed by Public Service on January 26, 2023, shall be filed no later than five days after the effective date of this Decision.

10. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 8, 2023.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners