

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0141E

IN THE MATTER OF PUBLIC SERVICE COMPANY OF COLORADO'S PETITION FOR DECLARATORY ORDER THAT NO COMMISSION AUTHORIZATION IS REQUIRED TO DECOMMISSION THE SALIDA UNIT ONE HYDROELECTRIC FACILITY, OR, IN THE ALTERNATIVE, APPLICATION FOR AUTHORIZATION TO DECOMMISSION THE SALIDA UNIT ONE HYDROELECTRIC FACILITY.

**COMMISSION DECISION GRANTING REQUEST FOR
DECLARATORY ORDER**

Mailed Date: May 24, 2023
Adopted Date: May 3, 2023

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the Petition for Declaratory Order (Petition) filed by Public Service Company of Colorado (Public Service or the Company) on March 1, 2023, seeking a declaration that Commission approval is not required to abandon, via decommissioning, certain assets and interests related to the Company's Salida Hydroelectric Project, Unit 1 (Salida Unit One).

2. Additionally, this Decision dismisses the application for approval of the decommissioning of the unit, which was filed in the alternative with the Petition.

B. Discussion

3. On March 1, 2023, Public Service filed its Petition for declaratory order pursuant to 4 *Code of Colorado Regulations* (CCR) 723-1-1304(f) of the Commission's Rules of Practice

and Procedure. The Company explains that Salida Unit One has reached the end of its useful life, would require significant investment to repair, and is no longer being used to generate power. It states that it recently conducted an analysis at the request of the Federal Energy Regulatory Commission (FERC) and determined that the unit is no longer economical, and that it would be more cost-effective and in the public interest to decommission the unit. As central support for its Petition, the Company states that FERC has exclusive jurisdiction over its hydroelectric facilities under the Federal Power Act, including exclusive authority to approve or modify the Company's decommissioning plan. It states it has filed an application for a license amendment with FERC that contains a decommissioning plan, including environmental- and cultural-related requirements.

4. As additional support for a declaration that Commission approval is unnecessary, Public Service explains that § 40-5-105, C.R.S., which generally requires Commission approval of the transfer of public utility property, is not applicable because there will be no transfer of property. Further, the Company states that Commission Rule 3103, which requires Commission approval for the modification of a Certificate of Public Convenience and Necessity (CPCN) or the abandonment of any service or facility, does not apply. It states that because Salida Unit One began operation in 1906, prior to the Commission's issuance of CPCNs, the facility does not have a CPCN and Rule 3103 is not triggered.

5. Public Service asks that the Commission issue an order resolving any uncertainty regarding the decommissioning of Salida Unit One and declaring that no Commission approval is necessary for the decommissioning and abandonment of the unit. The Company requests that if the Commission does not issue an order declaring that no Commission authorization is required to decommission the unit, the Commission grant its included application and approve the decommissioning as not contrary to the public interest.

6. By Decision No. C23-0206-I, issued March 30, 2023, the Commission noticed Public Service's March 1, 2023 filing as an application containing a petition for declaratory order. The Commission established a notice and intervention period ending April 27, 2023. Trial Staff of the Commission and the Office of the Utility Consumer Advocate intervened in this Proceeding. The intervenors agree with Public Service that FERC has exclusive jurisdiction over the decommissioning of Salida Unit One and support Public Service's request for a declaratory order stating Commission approval is unnecessary.

C. Findings and Conclusions

7. Public Service's Petition and alternative application is unopposed within the meaning of 4 CCR 723-1-1403(b). Therefore, we shall consider Public Service's requests pursuant to 4 CCR 723-1-1403(a).

8. The Commission may entertain a petition for declaratory order to terminate a controversy or remove an uncertainty regarding any tariff, statute, or Commission rule, regulation, or order. Rule 4 CCR 723-1-1304(i)(II).

9. We agree with Public Service and the intervenors in this Proceeding that FERC has exclusive jurisdiction over FERC-licensed hydroelectric operations, including the decommissioning of the Salida Unit One facility. Therefore, no Commission approval is required, and we grant Public Service's request for a declaratory order.

10. Because we find that the decommissioning does not require our approval, a determination on Public Service's application is unnecessary. We therefore dismiss the application as moot.

II. ORDER**A. It Is Ordered That:**

1. The Petition for Declaratory Order (Petition) filed by Public Service Company of Colorado (Public Service) on March 1, 2023, requesting a declaration that Commission approval is not necessary for the decommissioning of Public Service's Salida Hydroelectric Project Unit One, is granted.

2. The application for approval of the decommissioning of the unit, filed in the alternative with the Petition, is dismissed as moot.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 3, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

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Commissioners