

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0140E

IN THE MATTER OF THE VERIFIED APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR THE ROCKY MOUNTAIN 325 MW SOLAR PLUS 200 MW STORAGE GENERATION FACILITY AND THE 335 MW ARROYO 2 SOLAR GENERATION FACILITY.

**INTERIM COMMISSION DECISION SETTING
NOTICE AND INTERVENTION PERIOD; GRANTING, IN
PART, AND DENYING, IN PART, THE MOTION FOR
EXPEDITED NOTICE, SHORTENED NOTICE AND
INTERVENTION PERIOD, COMMISSION HEARING *EN
BANC*, AND AN EXPEDITED DECISION; AND
REQUIRING SUPPLEMENTAL FILING**

Mailed Date: April 3, 2024
Adopted Date: April 3, 2024

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

TABLE OF CONTENTS

I.	BY THE COMMISSION	2
A.	Statement	2
B.	Background and Public Service’s Filings.....	3
C.	Findings and Conclusions.....	6
II.	ORDER.....	9
A.	It Is Ordered That:	9
B.	ADOPTED IN COMMISSIONERS’ WEEKLY MEETING April 3, 2024.....	11

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission grants, in part, and denies, in part, the Motion for Expedited Notice, Shortened Notice and Intervention Period, Commission Hearing *en banc*, and an Expedited Decision (Motion to Expedite) that Public Service Company of Colorado (Public Service or the Company) filed on March 25, 2024. The Commission will take up the remaining request in the Motion to Expedite—the request to adopt the Company’s proposed procedural schedule for this Proceeding—by separate decision after the parties to this Proceeding have been established.

2. This Decision establishes a shortened notice and intervention period for the Verified Application for Approval of Certificates of Public Convenience and Necessity (CPCNs) for the Rocky Mountain Project and Arroyo 2 Project (Application). In addition, this Decision waives response time to the Company’s request for a shortened notice and intervention period and clarifies that the Commission will hear the Application *en banc*.

3. Requests for intervention, including a Notice of Intervention by Right of Staff of the Colorado Public Utilities Commission (Staff), shall be filed no later than **April 15, 2024**. Public Service shall have up to and including **April 19, 2024**, to file any response to the interventions.

4. Through this Decision, the Commission also sets response time to the remaining issue in the Motion to Expedite and to the Motion for Extraordinary Protection that Public Service filed on March 25, 2024. Responses to these two motions are due along with any interventions on April 15, 2024.

5. Finally, through this Decision, the Commission addresses the interaction between the Rocky Mountain Project and Arroyo 2 Project in this Proceeding and the subsequent implementation of the cost to construct performance incentive mechanism (PIM) and the operational PIM. As discussed below, the Commission requires Public Service to make a supplemental filing by April 19, 2024, addressing certain questions regarding this issue.

B. Background and Public Service's Filings

6. Public Service's Application in this Proceeding stems from the Commission's Phase II Decision (Decision No. C24-0052) in Proceeding No. 21A-0141E, addressing Public Service's 2021 Electric Resource Plan (ERP) and Clean Energy Plan (CEP). In Decision No. C24-0052, we approved a modified CEP and authorized the Company to pursue the generation resources in the Alternative Portfolio.¹ Two of the utility-owned generation projects within the Alternative Portfolio are the Rocky Mountain solar plus storage facility and the Arroyo 2 solar facility. The Commission required the Company to pursue the Alternative Portfolio of resources, including by filing applications for CPCNs for all Company-owned generation resources.² We further required that all Company-owned generation resources arising from the modified CEP be subject to both a cost to construct PIM and an operational PIM.³

7. On March 25, 2024, Public Service filed the present Application for two CPCNs to construct, own, and operate the Rocky Mountain project (a 325 MW solar plus storage facility) and the Arroyo 2 project (a 335 MW solar facility). Concurrently with this Application, Public Service filed the Motion for Extraordinary Protection and the Motion to Expedite.

¹ Proceeding 21A-0141E, Decision No. C24-0052 (issued January 23, 2024), ¶ 8.

² Decision No. C24-0052, ¶ 8.

³ Decision No. C24-0052, ¶ 8.

8. Citing Rule 3617(d)(II), the Company argues that because the Rocky Mountain and Arroyo 2 projects arise from the 2021 ERP/CEP, the Commission has already made a finding of need for these generation resources through the ERP process. Public Service goes on to assert that if “another party challenges the need for the approved resources, the challenging party has the burden of overcoming the Commission’s prior approval.”⁴

9. In its CPCN Application, Public Service states that it is “critical” that construction of the Rocky Mountain solar plus storage facility commences by mid-August 2024 so that the project can meet the December 31, 2025, commercial operation date (COD).⁵ The Company explains that the bid for Rocky Mountain assumed that it could utilize the existing generation interconnection replacement rights associated with the retirement of Comanche Unit 1. However, pursuant to the Company’s Federal Energy Regulatory Commission-approved Open Access Transmission Tariff, the Company asserts that if Rocky Mountain does not achieve a COD within three years of the retirement of Comanche Unit 1—which retired at the end of 2022—these replacement interconnection rights will be lost.⁶

10. The Company goes on to explain that Arroyo 2 does not have the same critical interconnection replacement timing requirement as Rocky Mountain. Public Service states that it combined the Rocky Mountain and Arroyo 2 CPCNs for regulatory efficiency given the close proximity of the projects, their relationship to the Comanche Generating Station, and the shared point of interconnection at the existing Comanche 230 kilovolt (kV) substation.⁷ In addition, the

⁴ HE 101 (Pascucci Direct), p. 16.

⁵ HE 101 (Application), pp. 2, 5.

⁶ HE 100 (Application), p. 12.

⁷ Motion to Expedite, p. 5.

Company represents that obtaining CPCN approvals for both projects will allow the Company to sequence construction activities and capture potential cost savings.

11. In the Motion to Expedite, the Company asks that the Commission (1) shorten the notice and intervention period to 20 days, (2) adopt the Company's proposed procedural schedule that would expedite the Proceeding and allow a Commission decision by August 1, 2024, (3) consider the Application *en banc*, (4) waive response time to the Company's request for a shortened notice and intervention period, and (5) require that any responses to the Motion to Expedite and the Motion for Extraordinary Protection be included in the interventions.⁸

12. As support for the need for a shortened notice and intervention period and an expedited review of its Application, Public Service reiterates that Rocky Mountain relies on the existing generation interconnection replacement rights associated with the retired Comanche Unit 1. These rights, in turn, require Rocky Mountain to have a COD by December 31, 2025. The Company asserts that to achieve this COD "without significant increases to cost," construction must commence by mid-August 2024.⁹

13. To facilitate the expedited review of the Application, the Company requests that the Commission hear the Proceeding *en banc*. In the alternative, the Company asks that if the Commission does refer this Proceeding to an administrative law judge, the Commission direct an initial Commission decision under Rule 1404(d) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.¹⁰

⁸ Motion to Expedite, p. 10.

⁹ Motion to Expedite, p. 4.

¹⁰ Motion to Expedite, pp. 8-9.

14. As for its request for 20-day notice and intervention period, Public Service calculates that this would put the intervention deadline at April 10, 2024.¹¹ The Company argues that “parties have been aware that this Application was forthcoming” since the Phase II Decision in the 2021 ERP/CEP and represents that it will “serve a courtesy copy of this Application on all parties who intervened in Proceeding No. 21A-0141E.”¹² Public Service thus contends that the shortened notice and intervention period of 20 days will not harm any interested parties because they will have adequate time to seek participation.¹³

15. Citing its rationale for shortening the notice and intervention period and the need for an expedited schedule, Public Service reiterates its requests that the Commission waive response time to the Company’s request for a shortened notice and intervention period and require that parties file any responses to the Motion to Expedite and the Motion for Extraordinary Protection at the same time as their notice of intervention as of right or motion to permissively intervene. Under the Company’s proposals, interventions and responses to both the Motion to Expedite and the Motion for Extraordinary Protection would be due on April 10, 2024.¹⁴

C. Findings and Conclusions

16. The Commission grants, in part, and denies, in part, Public Service’s request to set an intervention deadline of April 10, 2024. Paragraph (d) of Rule 4 CCR 723-1-1206 of the Commission’s Rules of Practice and Procedure states that, unless shortened by Commission decision or rule, the intervention period for notice mailed by the Commission shall expire

¹¹ Motion to Expedite, p. 8.

¹² Motion to Expedite, p. 7.

¹³ Motion to Expedite, p. 7.

¹⁴ Motion to Expedite, pp. 8, 10.

30 days after the notice's mailing date. Paragraph (3) of Rule 4 CCR 723-1-1206 requires the Commission's notice to state the date by which any objection, notice of intervention of right, or motion to permissively intervene must be filed.

17. If the Commission were to set an April 10, 2024, deadline for interventions, as Public Service requests, this would only give interested parties approximately seven days to intervene. Public Service represents in the Motion to Expedite that it will provide a courtesy copy of the Application to those parties who intervened in Proceeding 21A-0141E. However, there might be other entities who did not participate in Proceeding 21A-0141E that are interested in intervening. Rather than the Company's requested intervention deadline, the Commission sets an intervention deadline of April 15, 2024. This results in an approximately 12-day notice and intervention period after the mailing date of the notice and will likely only cause a one-week delay on when the Commission can rule on interventions, the Motion for Extraordinary Protection, and set the procedural schedule.

18. Although we decline Public Service's request for an April 10, 2024 intervention deadline, we find good cause to shorten the notice and intervention period relative to the standard 30-day period. We find Public Service has demonstrated that there is a legitimate interest for timely resolution of this Proceeding through its representations that the Rocky Mountain facility must achieve a COD by December 31, 2025, to maintain critical replacement interconnection rights.¹⁵ As requested, we waive the remaining response time to Public Service's request for a shortened notice and intervention period.

19. Thus, requests for intervention, including a notice of intervention by right of Staff, shall be filed no later than **April 15, 2024**.

¹⁵ Motion to Expedite, p. 4.

20. Public Service's Application is available for public inspection by accessing the Commission's E-Filings System at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24A-0140E.

This Decision is the Commission's notice that Public Service's Application has been filed.

21. In addition, any responses to the Motion to Expedite (including the proposed procedural schedule) and the Motion for Extraordinary Protection shall be filed no later than April 15, 2024, concurrently with the deadline for interventions.

22. Any response to a request for intervention shall be filed no later than April 19, 2024. While Public Service proposes an April 15, 2024, response deadline, given our decision to set the intervention deadline at April 15, 2024, moving the response deadline to April 19, 2024, is appropriate.

23. Considering the importance of an expedited review, we grant Public Service's request to hear this Proceeding *en banc*.

24. Finally, we take this opportunity to express the expectation that any CPCNs that are granted in this Proceeding will be subject to the cost to construct and operational PIMs and their precise methodology and implementation as determined in subsequent proceedings. Public Service acknowledges that with the need for a decision by August 2024, "this proceeding is not a good place to litigate proposed methodology and implementation of the Cost to Construct PIM and the Operational PIM."¹⁶ The feasibility of an expedited procedural schedule depends in part on the ability to modify the specifics of the PIMs for Rocky Mountain and Arroyo 2 projects after the CPCNs have been granted, especially as to the operational PIM.

¹⁶ HE 101 (Pascucci Direct), p. 30.

25. Regarding the cost to construct PIM, there appears to be discrepancies between the cost-to-construct point costs Public Service provided in Proceeding 21A-0141E versus what the Company now presents in this Proceeding. Similarly, the Company's statements in this Proceeding regarding whether the baseline for the cost to construct PIM includes the allowance for funds used during construction (AFUDC) appears inconsistent with what Public Service represented in Proceeding No. 21A-0141E. We therefore direct Public to submit a filing that explains (1) why the numbers the Company represents as the baseline for the cost to construct in this Proceeding are different from the numbers used in the Highly Confidential Exhibit 1 to its Response to Decision No. C23-0672-I submitted in Proceeding No. 21A-0141E, and (2) why Public Service now seems to indicate that the baseline for the cost to construct PIM does not include AFUDC despite contrary statements in Proceeding No. 21A-0141E.¹⁷ Public Service shall submit a filing with this explanation no later than April 19, 2024. Any inconsistencies in the cost to construct PIM compared to what was contemplated in Proceeding No. 21A-0141E could impede an expedited review of the Application.

II. ORDER

A. It Is Ordered That:

1. The Motion for Expedited Notice, Shortened Notice and Intervention Period, Commission Hearing *en banc*, and an Expedited Decision (Motion to Expedite) that Public Service Company of Colorado (Public Service or the Company) filed on March 25, 2024, is granted, in part, and denied, in part, consistent with the above discussion.

¹⁷ In Public Service's Application for Rehearing, Reargument, or Reconsideration (RRR Application) filed in Proceeding No. 21A-0141E, the Company states that the "Cost to Construct PIM is based on actual costs to place the asset in service, including the allowance for funds used during construction." (Public Service's RRR Application, p. 14).

2. The Company's request for a shortened notice and intervention period for its Verified Application for Approval of Certificates of Public Convenience and Necessity (CPCNs) for the Rocky Mountain Project and Arroyo 2 Project (Application) filed on March 25, 2024, is granted, in part, and denied, in part.

3. Service of this Decision will provide notice of Public Service's Application to all interested persons, firms, and corporations.

4. The notice and intervention period shall expire at **5:00 p.m. on April 15, 2024.**

5. Any person desiring to intervene or participate as a party in this Proceeding, including Staff of the Colorado Public Utilities Commission, shall file a petition for leave to intervene, or under the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, file other appropriate pleadings to become a party, no later than **April 15, 2024.**

6. All persons who file an objection, notice of intervention as of right, motion to permissively intervene, or any other appropriate pleading shall do so in accordance with the instructions set forth in the Commission's Rules of Practice and Procedure and this Decision.

7. Response time to the Company's request for a shortened notice and intervention period is waived.

8. Responses to the remaining requests in the Motion to Expedite as well as the Motion for Extraordinary Protection that Public Service filed on March 24, 2024, shall be filed no later than April 15, 2024.

9. Any response to a request for intervention shall be filed no later than April 19, 2024.

10. The Company's request that this Proceeding be heard *en banc*, is granted.

11. Public Service is directed to make a supplemental filing in this Proceeding, no later than April 19, 2024, explaining (1) why the numbers Public Service represents as the baseline for the cost to construct in this Proceeding are different from the numbers used in the Highly Confidential Exhibit 1 to its Response to Decision No. C23-0672-I submitted in Proceeding No. 21A-0141E, and (2) why Public Service now seems to indicate that the baseline for the cost to construct performance incentive mechanism does not include the allowance for funds used during construction despite contrary statements in Proceeding No. 21A-0141E.

12. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 3, 2024**

(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

TOM PLANT

Commissioners