

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0442E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS 2024 JUST TRANSITION SOLICITATION.

**INTERIM COMMISSION DECISION SETTING MATTER
FOR HEARING *EN BANC*; ESTABLISHING PARTIES;
GRANTING PRO HAC VICE REQUEST; SETTING
RESPONSE TIME TO OMNIBUS MOTION; AND
DIRECTING PARTIES TO RESPOND AND CONFER**

Issued Date: November 22, 2024

Adopted Date: November 20, 2024

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- A. It Is Ordered That:24
- B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING November 20, 2024.28

I. BY THE COMMISSION

A. Statement

1. On October 15, 2024, Public Service Company of Colorado (“Public Service” or the “Company”) filed a Verified Application of Public Service Company of Colorado for Approval of its 2024 Just Transition Solicitation (“Application”). Concurrently with the filing of the Application, Public Service filed an Omnibus Motion for Extraordinary Protection of Highly Confidential Information and for Partial Waiver of Rules 3606(b), 3612(a), 3618(b)(I), 3613(a) and 3613(d), and Waiver of Rule 3608(c)(III)-(IV) (“Omnibus Motion”).

2. By this Decision, the Commission sets for hearing before the Commission *en banc* the Company’s Application and establishes parties to this proceeding.¹

¹ As discussed below, the Commission grants the timely and unopposed requests for permissive intervention filed by the following parties: Holy Cross Electric Association, Inc. (“Holy Cross”); Colorado Energy Consumers (“CEC”); Climax Molybdenum Company (“Climax”); Walmart Inc. (“Walmart”); Natural Resources Defense Council (“NRDC”) and Sierra Club (collectively, the “Conservation Coalition”); Western Resource Advocates (“WRA”) and Southwest Energy Efficiency Project (“SWEEP”); Healthy Air and Water Colorado (“HAWC”); GreenLatinos, GRID Alternatives, NAACP State Conference CO-MT-WY, Pueblo Branch (“NAACP”), Roots to Resilience and Vote Solar (collectively, the “Environmental Justice Coalition”); Pivot Energy Inc. (“Pivot”); the Colorado Renewable Energy Society (“CRES”) and the Physicians for Social Responsibility Colorado (“PSR CO”); the Board of County Commissioners of Pueblo County (“Pueblo County Board”), City of Pueblo, and Pueblo Economic Development Corporation (“PEDCO”) (collectively, “Pueblo Intervenor”); Moffat County, Colorado (“Moffat County”) and the City of Craig, Colorado (“City of Craig”); the Town of Hayden, Colorado (“Town of Hayden”) and Routt County, Colorado (“Routt County”); Colorado Communities for Climate Action (“CC4CA”); Interwest Energy Alliance (“Interwest”); the Colorado Independent Energy Association (“CIEA”); Onward Energy Management LLC (“Onward”); the Coalition for Community Solar Access (“CCSA”); the Eastern Metro Area Business Coalition (“Business Coalition”); the Colorado Solar and Storage Association (“COSSA”), the Solar Energy Industries Association (“SEIA”), and Advanced Energy United (“AEU”) (collectively, the “Clean Energy Industry”); and the Office of Just Transition (“OJT”). The Commission denies the Motion to Intervene filed by Leslie Glustrom and construes her filings thus far as public comment, as discussed below. The Commission acknowledges the notices of intervention of right filed by the Utility Consumer Advocate (“UCA”), the Colorado Energy Office (“CEO”) and Trial Staff of the Commission (“Staff”).

3. In addition, this Decision addresses the following:
 - a. Grants the Out of State Counsel's Verified Motion Requesting Pro Hac Vice Admission filed by Patrick Woolsey;
 - b. Sets the response deadline to Public Service's Omnibus Motion, including the embedded Motion for Extraordinary Protection, to December 4, 2024.
 - c. Directs Public Service to confer with the parties in this Proceeding regarding whether there will be a neutral verifier of emissions reductions evaluating Public's Service's Application and, if so, whether that role will be filled by the Colorado Department of Health and Environment ("CDPHE"). Public Service shall file a conferral report on this topic no later than December 4, 2024.
 - d. Requires Staff to address the issue of developing a scope of work for hiring an independent transmission analyst, as required by Decision No. C24-0052,² (the "Phase II Decision") in Proceeding 21A-0141E (the "2021 EPR/CEP"), in a filing no later than December 4, 2024.

4. This Decision also directs the parties to file proposals for supplemental direct no later than December 4, 2024.³ This includes, but is not limited to, concerns regarding cross-docket coordination among this Proceeding and upcoming proceedings that may require synchronization amongst the Company and the parties.

5. Finally, through this Decision we require Public Service to confer with parties and submit by December 4, 2024, a conferral report addressing discovery procedures and a supplemental direct deadline proposal.

B. Background

6. The concept of the Pueblo Just Transition Solicitation ("JTS") first appeared in the Updated Non-Unanimous Partial Settlement Agreement ("USA") that Public Service filed in the 2021 Electric Resource Plan/Clean Energy Plan ("EPR/CEP") in April 2022. The JTS ties to provisions in the USA that Unit 3 of the coal-fired facility in Pueblo will retire no later than

² Issued January 23, 2024.

³ Commissioners discussed initial considerations at the Commissioners' discussion at the November 11, 2024, Commissioners' Weekly Meeting. All Commissioners agreed supplemental direct is necessary, but deferred specific direction to a future determination following party responses.

January 1, 2031. The Unit 3 retirement date in the USA harmonizes with another provision in the USA that has allowed Public Service to defer acquiring replacement resources for Unit 3 to the JTS.

7. The concept of the JTS also provided additional time after the approval of the 2021 ERP/CEP for further progress towards the 2050 goal of 100 percent clean energy; to improve optionality; to give technology time to continue developing; and to maintain flexibility. Because the JTS solicitation was intended to address Public Service's resource needs from 2029 through 2031, it allowed the resource acquisition period ("RAP") in the 2021 ERP/CEP to be truncated such that Public Service would only acquire resources with in-service dates on or before December 31, 2028.

8. The USA requires Public Service to commence the JTS no later than June 1, 2024, and the Commission approved this date in Decision No. C22-0459,⁴ ("Phase I Decision") in the 2021 ERP/CEP. On April 22, 2024, however, Public Service filed an Unopposed Motion for Variance to File Just Transition Solicitation no later than August 1, 2024. The Commission granted this Unopposed Motion. Subsequently, on July 17, 2024, Public Service filed another Unopposed Motion to delay the filing of the JTS to no later than October 15, 2024. As justification for the second delay, Public Service revealed that it would soon be filing a CEP Delivery Filing that would provide a comprehensive view of the next steps and will help lay the foundation for the JTS. Public Service argued that proper sequencing of the CEP Delivery Filing and the JTS will lead to efficiencies and reduce the potential for duplicative or revised filings in the JTS proceeding.

⁴ Issued August 3, 2022.

C. Pueblo Just Transition Solicitation Application

9. Public Service asserts that its Phase I modeling illustrates the following three fundamental needs: (1) fulfilling resource adequacy and providing reliable service; (2) continuing progress on emissions reductions in an increasing load environment; and (3) enabling economic development by serving both new and growing loads.⁵ The Company further asserts that “a large portfolio is needed in this RAP to fully meet all three of those needs.”⁶ More specifically, Public Service argues that it will need to acquire almost 14 GW of new resources:

10. As required in the Phase II Decision from the 2021 ERP/CEP, Public Service provides a comprehensive long-term rate analysis model at Hr. Ex. 101, Attachment JWI-5 (Base Case) and Attachment JWI-6 (Low Load). Consistent with the Phase II directives, Public Service asserts that its rate analysis includes estimated capital additions per year, which are reflected in the Company’s capital plan shared with investors; ongoing, normal course of business capital and O&M assumptions not already captured in its public capital plan; costs associated with other forecasted policy programs such as wildfire management and Clean Heat; and cost assumptions from JTS generation and transmission modeling.⁷

11. The Application proceeds to list several objectives for the JTS, including achieving an 80 percent emissions reduction by 2030, delivering a just transition, and improving Colorado’s ERP process. Starting with the 2030 emissions target, the Company notes that the 2021 ERP/CEP intentionally did not acquire any resources after 2028. Public Service thus contends that acquiring the resources in 2029 and 2030 that will achieve the 80 percent emissions reduction by 2030 remains a key focus of the JTS.

⁵ Hr. Ex. 101, Attachment JWI-1, p. 9.

⁶ Hr. Ex. 101, Attachment JWI-1, p. 9.

⁷ Hr. Ex. 101, Ihle Direct, pp. 112-13.

12. Regarding just transition, Public Service’s just transition approach consists of a modeling component (addressed below), a development component, and an economic development component. More specifically, Public Service reaffirms its commitment it made in the USA to provide 10 years of community assistance payments to Pueblo County, and six years of payments to Routt County and Morgan County, with such payments being offset by any infrastructure investments in the communities. Public Service states that once the final JTS portfolio is approved, the Company would file a separate application that would include the community assistance payment values for each community, netted with any new property tax offsets from the portfolio. As for the economic development component, Public Service offers to “facilitate discussions” with large new loads such as data centers to potentially site these loads in just transition communities.

13. As for the improvements to the ERP process, this component includes several modifications the Company proposes for Phase II that Public Service asserts are necessary given current and future dynamics. For instance, the Company seeks approval of a conforming bid policy. In addition, the Company proposes to allow submission of pre-construction development asset (“PCDA”) bids that will supplement and serve as backups to the Commission’s approved Phase II portfolio. The Company also asks that the Commission proactively decide to apply a 120-day timeline for CPCNs arising from the JTS.

14. In addition, Public Service suggests hardwiring certain changes to the Phase II modeling. First, the Company would award a specific modeling benefit, either in the form of a \$/kW-month or a \$/MWh, to projects in just transition communities. This modeling benefit would be in addition to the property tax tail/offset approach used in the 2021 ERP/CEP. Together, this would essentially make projects located Routt County, Morgan County, and Pueblo County look

more economic for purposes of the Phase II modeling. In addition, the Company states it has developed a base transmission adder that it will assign to bids but that resources inside the Denver Metro load constraint will receive a credit against the adder. This is transmission adder and credit system is designed to simulate the locational benefit of resources in the Denver Metro load constraint, under the assumption that such resources reduce the need for additional transmission investments.

15. Finally, Public Service proposes a process that would set the stage for medium- and long-term investments in carbon free dispatchable resources such as advanced geothermal and nuclear. Specifically, the Company requests approval to conduct a request for information (“RFI”) from such technologies in parallel with the Phase II competitive solicitation. Following a review of the RFI, the Company would, in cooperation with an Advisory Board of stakeholders and an independent facilitator, propose a portfolio of projects for initial development funding. Regarding the need for carbon free dispatchable resources, Public Service argues that this next RAP pushes the limits of what can be done on emissions reduction without new dispatchable zero- or low- carbon technologies becoming more feasible options. The Company asserts that a key inquiry for the Commission is whether to push forward with existing technologies to continue reducing emissions or maintain emissions reductions on a flatter trajectory while waiting out—and contributing to—advanced technology maturation.

16. Public Service also addresses several issues regarding PIMs in its direct case. To begin, Public Service argues against adopting Staff’s proposed utility-ownership PIM, which was initially proposed in Phase II of the 2021 ERP/CEP. The Company asserts that the proposal would compensate the utility strictly based on production, breaking the cost-of-service ratemaking construct entirely, and essentially deregulating cost recovery for impacted generation projects.

Public Service concludes that Staff's PIM represents a fundamental shift in regulatory approach that was not appropriate in the 2021 ERP/CEP and is not appropriate in this JTS.

17. Public Service also proposes an emissions reduction PIM but notes that the Company and parties have still not reached a consensus recommendation for the PIM. Public Service proposes a mass-based emissions reduction PIM that would set two endpoints in each year: (1) the as-modeled tonnage, and (2) a calculation of the 2030 Safe Harbor tonnage. Although Public Service sets out the details for how such an emissions reduction PIM would work, the Company ultimately opines that an emissions PIM that utilizes the as-modeled emissions reductions as the threshold for earning an incentive, as ordered in the Phase I Decision, may be unworkable.

D. *En Banc* Hearing

18. The Commission finds good cause to set the Application for hearing before the Commission *en banc* for purposes of reviewing and rendering a decision regarding the contents of the Company's Application.⁸

E. Establishment of Parties

1. Intervention Filing Summary

19. UCA, CEO, and Staff filed timely notices of intervention by right. Pursuant to Rule 4401(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1, no decision is required in response to appropriately filed notices of intervention by right. We acknowledge the notices of intervention of right, and that UCA, CEO, and Staff are parties to this Proceeding.

⁸ At this juncture, the Commission withholds its determination of the Application's completeness.

20. The following parties filed timely requests for permissive intervention: Holy Cross, CEC, Climax, Walmart, the Conservation Coalition, WRA and SWEEP, HAWC, the Environmental Justice Coalition, Pivot, CRES and PSR CO, Pueblo Intervenors, Moffat County and City of Craig, Town of Hayden and Routt County, CC4CA, Interwest, CIEA, Onward, CCSA, the Business Coalition, the Clean Energy Industry, OJT, and Leslie Glustrom.

21. Holy Cross is a cooperative electric association and is a public utility that has been deregulated from Commission rate jurisdiction but purchases a substantial portion of its wholesale electric power and energy from the Company. Holy Cross states it purchases its power and energy through a cost based purchased power contract, which may be affected by the outcome of this Proceeding. Holy Cross states it has an interest in this proceeding because it was admitted as a party in the 2021 ERP/CEP and because of its rights included in the USA from that proceeding.

22. CEC is an unincorporated association composed of corporate entities that operate facilities within the Company's service territory.⁹ CEC states that as some of Public Service's largest industrial customers and major economic engines in Colorado, it is of paramount importance to CEC that electric rates are reasonable and affordable, and electric service is reliable, so that CEC's members can continue to transact business in Colorado. Specifically, CEC argues the outcome of this Proceeding will result in significant capital investment in the Company's electric generation and transmission system that will directly impact CEC members' rates, as reflected in the long-term rate analysis provided in the Application.

23. Climax operates the Climax and Henderson molybdenum mines and related facilities near Leadville and Empire, Colorado, respectively, and is one of Public Service's largest

⁹ For purposes of this Proceeding, CEC states its members are as follows: AirGas, USA, LLC, Google, Lockheed Martin Corporation, Occidental Energy Ventures, Suncor Energy (U.S.A.) Inc., and Western Midstream.

customers. Climax states its overall interests in the Company's Application are its impact on reliability, resource adequacy, and costs to customers.

24. Walmart operates 105 retail units, two distribution centers, and employs over 30,000 associates in Colorado and is a large commercial customer of Public Service. Walmart states it has also set a goal to transition to low-impact refrigerants for cooling and electric equipment for heating by 2040, and the Company's Application is important in achieving these renewable energy goals within Colorado, and specifically, the Company's service territory. Walmart asserts its business and operations will likely be directly impacted by the approval of Public Service's Application.

25. The Conservation Coalition is composed of NRDC and Sierra Club, both of which are nonprofit environmental advocacy organizations dedicated to the protection of public health and the environment. The Conservation Coalition states an interest in this Proceeding because this case implements the USA that NRDC and Sierra Club both joined and the Commission approved in the 2021 ERP/CEP. As such, the Conservation Coalition states it has an interest in ensuring that the settlement terms that they agreed to are implemented consistent with the intent of the settling parties.

26. WRA and SWEEP, filing jointly, are nonprofits aimed at protecting the environment and economy throughout Colorado's transition to a low carbon future. WRA and SWEEP state that this proceeding will impact the tangible interests they represent, specifically environmental protection, through reduction of carbon dioxide emissions from the electricity sector in the state and assert that both entities have an interest in advocating for a resource plan that will ensure a rapid reduction in emissions associated with its generation resources which, in turn, can help to reduce emissions from the transportation and building sectors.

27. HAWC is a Denver-based nonprofit that focuses on the growing public health threats posed by climate change and highlights the voices of Colorado health professionals by sharing their stories and perspectives as frontline workers who see the health impacts of fossil fuel air pollution and climate change in their clinics, research, and communities. HAWC states it is uniquely positioned to highlight the health impacts of different generation acquisition scenarios and advocate for the resource acquisition strategies that will lead to the best health outcomes. HAWC states its members reside in most Colorado counties, including the Just Transition counties of Pueblo, Routt, and Morgan.

28. The Environmental Justice Coalition, composed of Green Latinos, GRID Alternatives, NAACP State Conference Co-MT-WY, Pueblo Branch, Roots to Resilience, and Vote Solar, states that each member organization has a tangible interest in how Public Service's Application will or will not equitably advance a just transition in Pueblo as the Pueblo coal plant retires. These interests include the pollution and potential harm to communities, the potential funding of a nuclear power plant, potential carbon capture facilities, and how the transition will affect the financial interests of the members and communities.

29. Pivot is a renewable energy provider and independent power producer that develops, finances, builds, owns, and operates solar and energy storage projects, and is one of the largest developers of distributed generation projects in the state. Pivot states it develops, owns, and operates the types of distributed generation resources Public Service is evaluating in its Application, including on-site solar, off-site solar, and community solar, and as such its interests will be directly and substantially affected by the Commission's decision in this Proceeding.

30. CRES and PSR CO, filing jointly, are nonprofit that advocate for a carbon-neutral Colorado powered by 100% renewable energy and for the limitation of toxic emissions that impact

the health and well-being of Colorado residents, respectively. CRES and PSR CO assert this Proceeding will affect both CRES's and PSR CO's tangible interests in pursuing their similar, but distinct missions to educate members, and actively participate in policy matters related to reducing greenhouse gas emissions, including emissions related to home gas use and utility electricity generation.

31. Pueblo Intervenor, filing jointly, state that as the result of decisions made by the Commission in other proceedings, as well as state emission reduction requirements, the residents and businesses of Pueblo are facing detrimental economic impacts due to the closure of Pueblo Unit 3 by the end of 2030. Pueblo Intervenor state they are uniquely positioned to explain the economic devastation they are facing, to advocate for some of the approaches suggested in the Application, and to provide additional suggestions and support for use by the Commission in arriving at a fair and just decision.

32. Moffat County and City of Craig state that, pursuant to §§ 8-48.5-130(1)(j) and 8-83-502(1)-(1.5), C.R.S., they are considered "tier one transition communities" and "coal transition communities" and, due to the impending closure of various coal facilities, will be presented with challenges for the workforces and communities as a whole. They assert an interest in and duty to ensure their citizens do not bear the burdens associated with the transition to renewable energy production by ensuring that the early closures of the two local coal plants result in robust and meaningful energy and economic development and workforce transition opportunities for their community members.

33. The Town of Hayden and Routt County state they are communities that will be significantly impacted by the retirement of facilities in the transition to renewable energy. Specifically, the closure of Public Service's Hayden Power Plant is estimated to lead to the

reduction of close to 200 jobs in the County, and the possible closure of Twenty Mile Coal Mine could result in additional loss of \$671,000 in tax revenues. They contend the loss of property tax revenues and jobs caused by the closure will have a significant impact on the local economy, particularly in West Routt County where household incomes differ vastly from East Routt County.

34. CC4CA is a nonprofit composed of 43 Colorado counties and municipalities that advocate for strong state and federal climate policy. CC4CA seeks to protect the direct and tangible interests of its local government members and their residents and businesses, including health, environmental, and affordability interests, in this proceeding and points out its long history of advocating for the reduction of emissions and promoting a clean and just energy transition.

35. Interwest is a Colorado nonprofit and states its commercial members include the leading renewable energy developers and manufacturers across the country and in Colorado. Interwest contends these members have a direct pecuniary interest in the scope of the Application because the public policies confirmed by legislation and incorporated into Public Service's ERP have generated substantial interest in renewable energy development in Colorado, reinforcing the critical business decisions to invest in Colorado.

36. CIEA is a Colorado nonprofit and trade association representing the interests of independent power producers whose mission is to support policies and practices that provide for the competitive acquisition of utility generation resources. CIEA states an interest in this Proceeding to ensure that Public Service's Application is comprehensive and transparent, that Colorado's independent power market remains robust, and that the new dimension of this ERP, through its focus on a just transition to a clean energy economy with significant emissions reductions, is accompanied by fair, transparent, and competitive bidding and bid evaluation processes.

37. Onward is an independent power producer that currently operates 56 wind, solar, and natural gas generation projects in 22 states across the country, including three power facilities in Colorado. Onward Energy seeks to intervene to protect its business interests in Colorado, with regard to both its existing facilities and new development opportunities.

38. CCSA is a nonprofit trade organization focused on supporting the community solar industry through legislative and regulatory efforts. CCSA states that its members have substantial interest in submitting bids for front-of-meter distributed generation (“DG”) resources in Phase II of the JTS. CCSA states its members have specific interests in ensuring that DG resources are eligible to participate in the Phase II RFP processes on a nondiscriminatory basis; that the full transmission, distribution and system operational value these resources provide to Public Service’s system is recognized and accounted for in the JTS plan; and that the compensation Public Service provides to DG resources is commensurate with the value they provide to the system.¹⁰

39. The Business Coalition is a consortium of 17 developers and businesses¹¹ with development interests in Public Service’s eastern metro service territory. The Business Coalition states its members are desirous of developing commercial and residential projects including but not limited to industrial, office, retail, hospitality, sports arenas, civic uses such as hospitals and schools, data centers, large scale manufacturing facilities, rail yards, single-family housing, multi-family complexes, senior housing, and master planned communities. The Business Coalition

¹⁰ CCSA further requests that the Commission issue an order directing Public Service to file Supplemental Direct Testimony in this Proceeding that: (1) accurately values and incorporates dispatchable DG resources into its Phase I Portfolio Development resource models and the JTS Transmission Study; and (2) proposes a process to acquire dispatchable DG resources consistent with § 40-2-130.5, C.R.S., during Phase II of this proceeding. CCSA is concerned that not evaluating dispatchable DG in this Proceeding could result in higher costs and greater risks for ratepayers for decades to come. Supplemental direct will be addressed through a future Commission decision.

¹¹ The Business Coalition is composed of the following: Fulenwider; Northpoint; Prologis; Majestic Realty; JA Green; Property Reserve; Opus; Ambrose; Porteos; Painted Prairie; Windler Development; Integrity Land Ventures; United Properties; Avanti Properties Group; Aurora Highlands; Westside Property Investment Company; and Blue Eagle.

contends the potential development of the Company's additional generation and transmission and its ability to adequately serve the area of proposed development will substantially affect all its members.

40. The Clean Energy Industry, composed of COSSA, SEIA, and AEU, filing jointly, represents various members of the renewable energy industry including solar companies, storage providers, trade associations and businesses. The Clean Energy Industry states it has a direct interest in evaluating and rebutting as needed Public Service's claims regarding the need and timing of resource acquisition, performance incentive mechanisms, the competitive solicitation process, load modeling assumptions, and the assessment of transmission resources.¹²

41. OJT states it has a statutory mandate, pursuant to § 8-83-503(3), C.R.S., to participate in the process of ensuring a just and inclusive transition for communities affected by the closure of coal mine and the retirement or transition of coal-fired power plants. As such, OJT asserts it had a direct interest in assisting the workers and communities affected by the transition proposed by Public Service, and that Public Service's Application impacts the timing of the closures, the resulting impacts, and the multiplier effects of the transition.

42. Leslie Glustrom is an individual seeking pro se intervenor status. In her Motion to intervene, Ms. Glustrom cites §§ 40-6-109(1) and 40-6.5-104(2), C.R.S., and contends she is entitled to be heard, noting that she has been granted pro se intervenor status in numerous prior proceedings. Ms. Glustrom asserts she has a tangible interest in the Proceeding in that the planet, nature, her home, her children and grandchildren, and the people of Pueblo are tangible beings and will be affected by the outcome of this Proceeding. Additionally, Ms. Glustrom states she will

¹² The Clean Energy Industry also requests the Commission establish a response time to Public Service's Omnibus Motion of December 6, 2024, and proposes the Commission order the Company on supplemental direct to properly review and investigate its cost-benefit analysis of distributed energy resources.

address two specific issues that other parties have neglected: (1) the discount rate used to determine the Present Value of the Revenue Requirement, and (2) the cost of outages that result from relying on centralized generation, long transmission lines and complex distribution networks.

43. Public Service, on November 18, 2024, filed a Response in Opposition to the Motion to Intervene of Leslie Glustrom (“Response”). In its Response, the Company contends that Ms. Glustrom fails to demonstrate how her interests as a customer cannot be adequately represented by UCA or how her interests as an Xcel Energy shareholder cannot be represented by Public Service.¹³ Public Service states that UCA is an adequate representative of customer interests with respect to cost impacts to customers, and that Ms. Glustrom’s environmental concerns will be adequately addressed by the numerous environmental advocacy organizations that have intervened in the Proceeding. Additionally, Public Service contends Ms. Glustrom’s assertion regarding discount rates is incorrect, and that the Company’s calculations are fully compliant with statute. Public Service requests that the Commission deny her intervention, consistent with the last two ERP proceedings.

2. Standard for Permissive Intervention

44. Section 40-6-109(1), C.R.S., creates two classes of parties that may participate in Commission proceedings: those who may intervene as of right and those whom the Commission permits to intervene.¹⁴ For a party to be “interested in or affected by” a proceeding, requires “a substantial personal interest in the subject matter of the proceedings [whose] intervention will not unduly broaden the issues.”¹⁵

¹³ Public Service Response at p. 5.

¹⁴ *Pub. Serv. Co. of Colo. v. Trigen-Nations Energy Co.*, 982 P.2d 316, 327 (Colo. 1999).

¹⁵ *Id.* (emphasis added).

45. Rule 1401(c) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, requires persons seeking permissive intervention to show the following, in pertinent 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.

46. Further, Rule 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 UCA or inconsistent with other classes of consumers represented by UCA. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., UCA has a statutory mandate to represent the interest of residential ratepayers.

47. Pursuant to Rule 1500, 4 CCR 723-1, the party seeking leave to intervene by permission bears the burden of proof with respect to the relief sought.

3. Unopposed Interventions

48. We find that each non-residential, counsel-represented 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 each of the unopposed requests for permissive intervention.

49. Given the numerous intervenors to this Proceeding, parties are reminded and encouraged to seek efficiencies through conferral where their respective positions may align such that pleadings or positions can be provided concisely, and jointly, if possible.

50. The following parties, including intervenors of right, to this Proceeding are therefore established: Public Service, Staff, UCA, CEO, Holy Cross, CEC, Climax, Walmart, the Conservation Coalition, WRA and SWEEP, HAWC, the Environmental Justice Coalition, Pivot, CRES and PSR CO, the Pueblo Intervenors, Moffat County and City of Craig, Town of Hayden and Routt County, CC4CA, Interwest, CIEA, Onward, CCSA, the Business Coalition, the Clean Energy Industry, and OJT.

4. Leslie Glustrom's Intervention

51. In her Motion, Ms. Glustrom, cites §§ 40-6-109(1) and 40-6.5-104(2), C.R.S., contending she has a right to intervene in Commission proceedings and that UCA's participation in a proceeding does not limit her right to intervene.¹⁶ Ms. Glustrom states she has specific interests in this Proceeding, including both environmental issues and technical concerns with the Company's Application, that will not be adequately represented by other parties.¹⁷

52. As upheld by Colorado courts, the Commission has consistently rejected Ms. Glustrom's arguments that the statute creates a "right" of intervention for Ms. Glustrom.¹⁸ The Commission also has found, with rare exception, that Ms. Glustrom fails to meet the requirements of § 40-6-109(1), C.R.S., and Rule 1401, 4 CCR 723-1, for permissive intervention because she does not demonstrate: a pecuniary or tangible interest not shared by residential ratepayers in general; that her interests would not be adequately represented by UCA; and that there is bad faith, collusion, or negligence on behalf of UCA.¹⁹ This Commission again rejects

¹⁶ Glustrom Motion at pp. 4-5.

¹⁷ Glustrom Motion at p. 7.

¹⁸ See, e.g., *Glustrom v. Pub. Util. Comm'n*, 11CV8131 (Order Dismissing Appeal, July 11, 2012).

¹⁹ See e.g., Decision No. C21-0315-I at p. 17 issued in Proceeding No. 21A-0141E (May, 27 2021) (denying Ms. Glustrom's intervention in Public Service's most recent ERP Proceeding); Decision No. C16-0663-I at pp. 12-13 issued in Proceeding No. 16A-0396E (July 13, 2016) (denying Ms. Glustrom's intervention in Public Service's 2016 ERP proceeding); Decision No. C14-1043 at p. 16 issued in Proceeding No. 14AL-0660E (October 16, 2014) (denying Ms. Glustrom's intervention, including that she does not have a right to intervene pursuant to statute).

Ms. Glustrom's arguments regarding § 40-6-109, C.R.S.,²⁰ and prior Commission decisions. Ratepayers, including Ms. Glustrom, do not have a "right" to intervene based on § 40-6-109, C.R.S.

53. Nevertheless, pursuant to Rule 4 CCR 723-1-1401(c), Ms. Glustrom may request permissive intervention by indicating that this Proceeding may affect her pecuniary interests, provided that she also discusses whether UCA can adequately represent her distinct interest. Ms. Glustrom asserts that her interests would not otherwise be adequately represented by UCA, stating that while she appreciates the hard work of UCA over the years, they have consistently failed to recognize the importance of the discount rate and vulnerability of the centralized generation and long transmission line model to extreme weather events.²¹

54. Consistent with our recent orders in the 2016 ERP and 2021 ERP/CEP, we find Ms. Glustrom's argument on this point unpersuasive and that she has failed to demonstrate pecuniary and tangible interests not shared by other residential ratepayers and parties to this matter. We agree with Public Service that Ms. Glustrom's Motion falls short of the requirements for permissive intervention and that she has failed to demonstrate that her interests as a ratepayer will not be adequately represented by UCA and her interests as an Xcel shareholder will not be represented by the Company. We further note that environmental and related policy concerns raised are also represented by numerous other established parties represented by counsel.

55. We therefore deny Ms. Glustrom's intervention, consistent with prior Commission decisions in the 2016 ERP and 2021 ERP/CEP.²² We construe Ms. Glustrom filings thus far and moving forward as public comments.

²⁰ The Commission's determination was consistent with the Denver District Court ruling. *See, Glustrom v. Pub. Util. Comm'n*, 11CV8131 (Order Dismissing Appeal, July 11, 2012).

²¹ Glustrom Motion at p. 20.

²² Chair Blank dissents from the majority determination to deny Ms. Glustrom's intervention.

56. Other parties in this Proceeding, including the Conservation Coalition and WRA and SWEEP, are well positioned to address Ms. Glustrom's concerns related to climate change. Additional parties, including Interwest, Clean Energy Industry, Vote Solar, and CEO advocate for the acquisition of resources that reduce the usage of fossil fuels and that protect the environment. Ms. Glustrom is not precluded from working with these or other parties in this Proceeding to address her concerns.

57. In addition, we note that Ms. Glustrom has advocated through public comment in past proceedings, including the Company's most recent ERP, and has already filed significant documents in this Proceeding. These filings are construed as public comment, which may be filed at any time. We continue to encourage Ms. Glustrom and all public participants to engage in the comment process throughout this Proceeding, including in the early stages of considerations such that the Company and established parties can review public comments as they prepare testimony and responses.

F. Request for Pro Hac Vice Appearance

58. An Attorney who is not licensed to practice law in Colorado must be granted permission to appear pro hac vice in a Commission proceeding. Rule 1201(a), 4 CCR 723-1, governs the admission of out-of-state attorneys. Rule 1201(a) requires compliance with Colorado Rule of Civil Procedure ("CRCP") 205.4, which itself expressly incorporates CRCP 205.3. As pertinent here, CRCP 205.3(2)(a) details what an out-of-state attorney must do to be permitted to appear pro hac vice and includes these requirements: (a) file a verified motion with the administrative agency requesting permission to appear; (b) designate an associated attorney who is admitted and licensed to practice law in Colorado; (c) file a copy of the verified motion with the Clerk of the Supreme Court Office of Attorney Regulation at the same time the

verified motion is filed with the administrative agency; (d) pay the required fee to the Clerk of Supreme Court collected by the Office of Attorney Regulation; and (e) obtain permission from the administrative agency for such appearance.

59. On November 14, 2024, Patrick Woolsey filed a motion to appear *pro hac vice* on behalf of Sierra Club. Mr. Woolsey states he is a licensed attorney in good standing in California and has not previously sought *pro hac vice* admission in Colorado. Mr. Matt Gerart, a member of the Colorado Bar, signed the motion and will be present and participate in a meaningful and substantial manner throughout the Proceeding. Mr. Woolsey states he has filed a copy of this motion with the Clerk of the Colorado Supreme Court and has paid the required fee.

60. Patrick Woolsey has satisfied the requirements of CRCP 205.4. Therefore, we grant Mr. Woolsey's request to appear *pro hac vice*.²³

G. Public Service's Omnibus Motion and Supplemental Direct Response

61. Alongside its Application, Public Service filed an Omnibus Motion which contained a request for extraordinary protection of highly confidential information and a request for waiver and partial waiver of various Commission rules.

62. We set the response deadline to Public Service's Omnibus Motion to December 4, 2024.

63. In addition, we request party filings regarding proposed supplemental direct. The Commissioners agree that supplemental direct will be necessary in this matter, but defer our final determination on supplemental direct requirements until after party responses can be considered. Parties shall file supplemental direct considerations by no later than December 4, 2024,

²³ Proof of Pro Hac Vice Registration for Patrick Woolsey was filed November 21, 2024, in this Proceeding.

and are encouraged to review our discussion at the November 20, 2024, weekly meeting on initial considerations, in addition to conferring with other parties on aligned recommendations.

64. We anticipate consideration of cross-docket concerns and welcome party input on process to ensure appropriate information and updates are included in the record here. Notably, we anticipate significant filings in mid-December from the Company regarding the certificate of public convenience and necessity for additional transmission investment in the Denver metro area and the Company's distribution system plan. While some input on supplemental direct regarding cross-docket considerations and updates may be appropriately proposed, we welcome input on whether and to what extent any aligned considerations are necessary.

H. Emissions Reduction Verification, Discovery, and Supplemental Direct Deadline Conferral

65. As discussed above, the Company includes in its initial filings that a primary purpose of the JTS is to continue on a trajectory that will meet or exceed the state's ambitions emission reduction goals. However, and unlike the 2021 ERP/CEP, the Company does not include any process or discussion for verification of emission reductions, and whether a "neutral verifier" should be (or has been) engaged. We therefore require Public Service to confer with the parties in this Proceeding regarding whether there should be a neutral verifier of emissions reductions and, if so, whether that role will be filled by the Colorado Department of Health and Environment ("CDPHE"). Public Service shall file a conferral report, including any proposal on process, on this topic no later than December 4, 2024. To be clear, this directive should not be construed as a determination that the emission verification process required in the 2021 ERP/CEP is also required or appropriate in this Proceeding.

66. Given our interest in supplemental direct, the need for further input from the Company and parties as discussed in this order, and that we anticipate filings in December to potentially need review to confirm whether any further initial information is needed, we do not require the submission of a full procedural schedule at this time. However, we balance these concerns with the intention of beginning discovery procedures for parties to develop their positions considering an initial supplemental direct deadline. Public Service shall confer with parties and must submit by December 4, 2024, a conferral report addressing discovery procedures and a supplemental direct deadline proposal. Further conferral and consideration of a full schedule shall be directed through future order. The Commission understands that the scope of supplemental direct is not yet set, but appreciates initial deadline proposals given discussion, party interest, and the Company's position on timing, including timelines for reaching a Phase I decision, but also considering anticipated filings in the coming weeks.

I. Independent Transmission Analyst

67. In the Phase II Decision in the 2021 ERP/CEP, the Commission directed Staff to initiate a stakeholder process with UCA, CEO, and Public Service to bring forward a scope of work for hiring an independent transmission analyst ("ITA"). The Phase II Decision further states: "Staff should bring forward the proposed scope of work as soon as reasonably feasible but no later than through initial filings at the commencement of the 2024 JTS proceeding."²⁴

68. Staff's initial pleading provides no direct mention of the ITA. In order to understand next steps, Staff shall file no later than December 4, 2024, an update and description of the ITA stakeholder process and Staff's plans for proposing a scope of work for the ITA in initial filings in this Proceeding.

²⁴ Phase II Decision, ¶ 166.

II. ORDER

A. It Is Ordered That:

1. The Verified Application for Approval of its 2024 Just Transition Solicitation (“Application”), filed by Public Service Company of Colorado (“Public Service”) on October 15, 2024, is set for hearing *en banc*.

2. A procedural schedule, including filing deadlines and discovery procedures, shall be established by separate decision.

3. The Petition for Permissive Intervention filed by Interwest Energy Alliance (“Interwest”) on November 6, 2024, is granted.

4. The Petition to Intervene filed by the Office of Just Transition (“OJT”) on November 8, 2024, is granted.

5. The Motion to Intervene, Entry of Appearance, and Request to Set Deadline for Response filed by the Colorado Independent Energy Association (“CIEA”) on November 13, 2024, is granted.

6. The Motion to Intervene filed by Leslie Glustrom on November 14, 2024, is denied, consistent with the discussion above. The documents filed by Ms. Glustrom on October 18, 2024, are construed as public comment.

7. The Motion to Intervene filed by Natural Resources Defense Council and Seirra Club (“Conservation Coalition”) on November 14, 2024, is granted.

8. The Out of State Counsel’s Verified Motion Requesting Pro Hac Vice Admission filed by Patrick Woolsey of Sierra Club on November 14, 2024, is granted.

9. The Motion to Intervene filed by Holy Cross Election Association, Inc. (“Holy Cross”) on November 14, 2024, is granted.

10. The Motion to Intervene filed by Onward Energy Management LLC (“Onward”) on November 14, 2024, is granted.

11. The Motion to Permissively Intervene filed by Colorado Energy Consumers (“CEC”) on November 14, 2024, is granted.

12. The Motion to Intervene filed by the Board of County Commissioners of Pueblo County, City of Pueblo, and Pueblo Economic Development Corporation (collectively, “Pueblo Intervenors”) on November 14, 2024, is granted.

13. The Motion for Permissive Intervention filed by Western Resource Advocates (“WRA”) and Southwest Energy Efficiency Project (“SWEET”) on November 14, 2024, is granted.

14. The Motion for Leave to Intervene and Entry of Appearance filed by Healthy Air and Water Colorado (“HAWC”) on November 15, 2024, is granted.

15. The Motion for Permissive Intervention filed by Pivot Energy Inc. (“Pivot”) on November 15, 2024, is granted.

16. The Joint Motion for Leave to Intervene filed by the Colorado Renewable Energy Society (“CRES”) and the Physicians for Social Responsibility Colorado (“PSR CO”) on November 15, 2024, is granted.

17. The Joint Motion to Intervene, Entry of Appearance, and Notice of Financial Disclosure filed by GreenLatinos, GRID Alternatives, NAACP State Conference CO-MT-WY, Pueblo Branch, Roots to Resilience and Vote Solar (collectively, the “Environmental Justice Coalition”) on November 15, 2024, is granted.

18. The Entry of Appearance and Motion to Intervene filed by the Town of Hayden, Colorado (“Town of Hayden”) and Routt County, Colorado (“Routt County”) on November 15, 2024, is granted.

19. The Motion for Intervention filed by Walmart Inc. (“Walmart”) on November 15, 2024, is granted.

20. The Motion to Intervene filed by Colorado Communities for Climate Action (“CC4CA”) on November 15, 2024, is granted.

21. The Motion to Intervene and Entry of Appearance filed by Moffat County, Colorado (“Moffat County”) and the City of Craig, Colorado (“City of Craig”) on November 15, 2024, is granted.

22. The Joint Motion to Intervene, Request for Hearing, Entry of Appearance, and Request for Response Time to Public Service Company of Colorado’s Omnibus Motion for Extraordinary Protection filed by the Colorado Solar and Storage Association, the Solar Energy Industries Association, and Advanced Energy United (collectively, the “Clean Energy Industry”) on November 15, 2024, is granted, in part.

23. The Motion to Permissively Intervene filed by the Eastern Metro Area Business Coalition (“Business Coalition”) on November 15, 2024, is granted.

24. The Motion to Intervene and Request for Supplement Direct Testimony filed by the Coalition for Community Solar Access (“CCSA”) on November 15, 2024, is granted, in part.

25. The Motion to Intervene Permissively filed by Climax Molybdenum Company (“Climax”) on November 15, 2024, is granted.

26. Consistent with the discussion above, the following are parties to this Proceeding: Public Service, UCA, CEO, Staff, Holy Cross, CEC, Climax, Walmart, the Conservation Coalition,

WRA and SWEEP, HAWC, the Environmental Justice Coalition, Pivot, CRES and PSR CO, Pueblo Intervenors, Moffat County and City of Craig, Town of Hayden and Routt County, CC4CA, Interwest, CIEA, Onward, CCSA, the Business Coalition, the Clean Energy Industry, and OJT.

27. The deadline to files responses to Public Service's Omnibus Motion for Extraordinary Protection of Highly Confidential Information and for Partial Waiver of Rules 3606(b), 3612(a), 3618(b)(I), 3613(a) and 3613(d), and Waiver of Rule 3608(c)(III)-(IV) is December 4, 2024.

28. Parties shall provide filings regarding supplemental direct no later than December 4, 2024. This includes, but is not limited to, concerns regarding cross-docket coordination among this Proceeding and upcoming proceedings that may require synchronization amongst the Company and the parties.

29. Public Service shall confer with the parties in this Proceeding regarding whether there needs to be a neutral verifier of emissions reductions evaluating Public Service's Application and, if so, whether that role will be filled by the Colorado Department of Health and Environment (CDPHE). Public Service shall file a conferral report on this topic no later than December 4, 2024.

30. Public Service shall confer with parties regarding the appropriate discovery procedures and deadline for supplemental direct and shall submit a conferral report on these issues by December 4, 2024.

31. Staff shall address the issue of developing a scope of work for hiring for independent emissions analyst, as required by Decision No. C24-0052 in Proceeding No. 21A-0141E, in a filing no later than December 4, 2024, consistent with the discussion above.

32. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 20, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners