

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18A-0569E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO PURSUANT TO § 40-3-104.3, C.R.S., FOR APPROVAL OF A SPECIFIC
CUSTOMER CONTRACT.

**DECISION GRANTING JOINT MOTION, ACCEPTING
ELECTRIC SERVICES AGREEMENT, AND APPROVING
THE FORCE MAJEURE TIERING PROCESS WITH A
ONE-TIME ELECTION UNDER RULE 3664(B)**

Mailed Date: October 17, 2019

Adopted Date: October 16, 2019

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I. BY THE COMMISSION

A. Statement

1. On September 13, 2019, Public Service Company of Colorado (Public Service or Company) and CF&I Steel, L.P., doing business as EVRAZ NA (EVRAZ) filed a Joint Motion to accept the executed Electric Services Agreement (ESA) pursuant to § 40-3-104.3, C.R.S., and

Decision No. C18-0889 in this proceeding (Joint Motion). The ESA provides for a special rate for EVRAZ, and includes a 240 MW customer-sited solar photovoltaic electric generating facility to be located on land owned or leased by EVRAZ. The ESA also includes a Force Majeure Tiering Process to allow EVRAZ adequate time to recover from a potential material breach without violating the contract.

2. We grant the Joint Motion, accept the ESA, and approve the Force Majeure Tiering Process.

B. Background

3. On August 16, 2018, Public Service filed an Application for authorization to provide electric service to EVRAZ under the terms of a negotiated ESA Memorandum of Understanding (ESA MOU), which contained rates for service that depart from Public Service's tariff rates. The Company and EVRAZ intended to enter agreements to develop a 240 MW customer-sited solar photovoltaic electric generating facility to be located on land owned or leased by EVRAZ which would be subject to the Company's Net Energy Metering Tariff.

4. On October 4, 2018, the Commission issued Decision No. C18-0889 approving the Application, authorizing Public Service to enter into a contract with EVRAZ consistent with the terms and conditions of the ESA MOU pursuant to § 40-3-104.3(2)(a), C.R.S.

5. On March 26, 2019, the Company and EVRAZ informed the Commission that the developer for the solar project could not proceed without a price increase on the Power Purchase Agreement (PPA),¹ and therefore Public Service and EVRAZ would jointly be conducting another competitive solicitation for the EVRAZ project.

¹ See Public Service Company of Colorado and CF&I Steel LP's Joint Notice of Agreement Status filed on March 26, 2019.

C. Joint Motion

6. In the Joint Motion, the Company and EVRAZ note that they received a strong response to the competitive solicitation, and ultimately selected a 240 MW solar project bid by a reputable developer, Lightsource BP. The Company and Evraz state “[t]he PPA Rate with the new Solar Facility is very similar to the prior PPA Rate, increasing slightly...”² On August 30, 2019, the Company and EVRAZ executed the ESA, and the Company and Lightsource BP entered into a PPA with the PPA Rate on the same date.

7. As required by § 40-3-104.3(e), C.R.S., and Decision No. C18-0889, the Company and EVRAZ filed the executed ESA and its attachments (including the executed PPA) with the Commission on September 9, 2019.

8. The Company and EVRAZ request that the Commission accept the ESA, including the updated PPA and PPA Rate, as consistent with the terms and conditions of the ESA MOU approved by the Commission in Decision No. C18-0889. In addition, the Company and EVRAZ seek Commission approval of the proposed Force Majeure Tiering Process contained in the ESA, which includes details of how EVRAZ’s one-time election under Rule 3664(b) of the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, regarding excess generation roll over would be applied.

9. The Company and EVRAZ state that they conferred with all parties to this proceeding regarding the Joint Motion. The Office of Consumer Counsel does not object to the Joint Motion. Trial Staff (Staff), the Colorado Energy Office, Colorado Energy Consumers, and Pueblo County take no position. On September 26, 2019, Staff filed a response explicitly stating that it does not oppose the approval requested in the Joint Motion.

² Joint Motion at ¶ 12.

D. Discussion

10. We agree that the PPA Rate³ for the new Solar Facility is very similar to the prior PPA Rate contained in the initial application and approved in Decision No. C18-0889. Further, we agree that the proposed Force Majeure Tiering Process contained in the ESA and EVRAZ's one-time election under Rule 3664(b) are appropriate and should be approved.

11. The Joint Motion is granted as unopposed. We accept the ESA, and approve the Force Majeure Tiering Process.

II. ORDER**A. The Commission Orders That:**

1. The Joint Motion to accept the executed Electric Services Agreement (ESA) pursuant to § 40-3-104.3, C.R.S., and Decision No. C18-0889 in this proceeding; jointly filed by Public Service Company of Colorado and CF&I Steel, L.P., doing business as EVRAZ NA (EVRAZ) on September 13, 2019; is granted.

2. The ESA is accepted. The Force Majeure Tiering Process contained in the ESA, which specifies EVRAZ's one-time election under Rule 3664(b), 4 *Code of Colorado Regulations* 723-3, is approved.

3. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

4. This Decision is effective on its Mailed Date.

³ The specific PPA rates are Highly Confidential.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 16, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners