

Decision No. C20-0428-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 19A-0728E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE VOLTAGE CONTROL FACILITIES ASSOCIATED WITH THE COLORADO ENERGY PLAN.

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PROCEEDING NO. 20A-0059E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE GREENWOOD TO DENVER TERMINAL 230 KV TRANSMISSION PROJECT ASSOCIATED WITH THE COLORADO ENERGY PLAN, ASSOCIATED FINDINGS OF NOISE AND MAGNETIC FIELD REASONABLENESS, AND UPRATE PROJECTS.

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**INTERIM DECISION RESCINDING REFERRALS;  
VACATING PROCEDURAL SCHEDULES;  
CONSOLIDATING PROCEEDING NOS. 19A-0728E AND  
20A-0063E; GRANTING REQUEST TO HEAR THE  
CONSOLIDATED PROCEEDING EN BANC; GRANTING,  
WITH MODIFICATIONS, PROPOSED PROCEDURES FOR  
THE CONSOLIDATED PROCEEDING; AND  
GRANTING JOINT MOTION FOR LEAVE TO REPLY**

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Mailed Date: June 9, 2020

Adopted Date: June 3, 2020

**I. BY THE COMMISSION**

**A. Statement**

1. On May 26, 2020, Public Service Company of Colorado (Public Service or Company) and Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Settlement and Joint Motion to Approve Settlement, Consolidate Proceedings, Hear Consolidated Proceeding *en banc*, Approve Procedural Schedule, and Shorten Response Time (Joint Motion).

The proposed relief sought by the Joint Motion affects both Proceeding No. 19A-0728E and Proceeding No. 20A-0063E.

2. The Colorado Office of the Consumer Council (OCC) filed its Response in opposition to the Joint Motion on May 29, 2020. The Settling Parties then filed a Joint Motion for Leave to Reply along with their proposed Reply on June 1, 2020.

3. The Commission grants the Settling Parties' Joint Motion for Leave to Reply and will accept the proposed Reply. In addition, we grant, in part, the Joint Motion. Specifically, this Decision grants the following relief that the Settling Parties request in the Joint Motion: (1) consolidating Proceeding Nos. 19A-0728E and 20A-0063E;<sup>1</sup> and (2) hearing the consolidated proceeding *en banc*. The Commission defers ruling on the Settling Parties' request to approve the Settlement Agreement and modifies the Settling Parties' requested procedural schedule.

#### **B. Background**

4. The two proceedings consolidated by this Decision (Proceeding No. 19A-0728E and Proceeding No. 20A-0063E) both originate from Public Service's 2016 Electric Resource Plan (2016 ERP) and Colorado Energy Plan (CEP) Portfolio. With Commission Decision No. C18-0761, the Commission approved Public Service's 2016 ERP and CEP Portfolio, but directed Public Service to file any required applications for a Certificate of Public Convenience and Necessity (CPCN) for "the additional transmission investment identified in the 120-Day Report . . . that is part of the \$204 million total transmission investment associated with the CEP Portfolio."<sup>2</sup>

5. In Proceeding Nos. 19A-0728E and 20A-0063E, Public Service seeks CPCNs for some of the transmission investments that the 2016 ERP and the CEP Portfolio contemplate.<sup>3</sup>

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<sup>1</sup> Proceeding No. 19A-0728E shall be the primary proceeding for administrative purposes.

<sup>2</sup> Proceeding No. 16A-0396E, Decision No. C18-0761, ¶133.

<sup>3</sup> Proceeding No. 19A-0728E, Application at pages 6-7; Proceeding No. 20A-0063E, Application at page 2.

Public Service anticipates filing another application later in 2020 for a third CPCN that would complete the contemplated transmission investments.<sup>4</sup>

**1. Proceeding No. 19A-0728E Voltage Control CPCN**

6. On December 20, 2019, Public Service filed an Application for a CPCN regarding the installation of voltage control facilities (Voltage Control CPCN). The Company included the Direct Testimony of Thomas Green with its application and later filed Supplemental Direct Testimony of Mr. Green on March 12, 2020. Public Service asserts that these voltage control facilities are necessary to implement the CEP Portfolio. Specifically, Public Service argues that the voltage control facilities are necessary to accommodate the early retirement of Comanche 1 and 2 and to safely and reliably integrate the wind and solar generating facilities authorized as part of the 2016 ERP.<sup>5</sup> Public Service estimates that the total cost of the voltage control devices will be about \$93.6 million.<sup>6</sup>

7. Staff and the OCC subsequently filed notices of intervention as of right on January 10, 2020 and January 21, 2020, respectively. In their interventions, Staff and OCC generally assert that the matter should be set for hearing to investigate the differences in the proposed facilities and the associated cost estimates from the CEP Portfolio, the usefulness of the proposed facilities, and whether the projects are appropriate to satisfy long-term needs for the Company's system.<sup>7</sup>

8. On January 29, 2020, the Commission deemed Public Service's Voltage Control CPCN Application complete and referred the proceeding to an Administrative Law Judge (ALJ) by minute entry.

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<sup>4</sup> Proceeding No. 19A-0728E, Joint Motion to Consolidate at page 4.

<sup>5</sup> Proceeding No. 19A-0728E, Application at pages 6-7.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> See Proceeding No. 19A-0728E, Notice of Intervention as of Right by Staff; Notice of Intervention of Right by OCC.

9. By Decision No. R20-0142-I, the ALJ extended the time for the Commission to issue a decision regarding the Voltage Control CPCN to October 5, 2020.<sup>8</sup> In addition, the ALJ established the procedural schedule, including Answer Testimony due March 17, 2020, Rebuttal and Cross-Answer testimony due March 26, 2020, and an evidentiary hearing on June 1 and 2, 2020. This schedule was designed to allow the Commission to meet the December 7, 2020 deadline for the Commission to issue a decision pursuant to § 40-6-109.5, C.R.S.<sup>9</sup>

10. On April 17, 2020 Staff filed the Answer Testimony of Adam Gribb. Staff generally argues that Public Service's increase in projected costs for the voltage control projects from \$35 million in the 2016 ERP to \$93.6 million in the CPCN application is not reasonable, Public Service's proposed 20 percent contingency allowance is excessive, additional reporting is necessary, and ERP procedures to address such cost estimates are necessary.<sup>10</sup>

11. The OCC did not file Answer Testimony.

12. On May 6, 2020 Public Service filed the Rebuttal Testimony of Mr. Green. Public Service rebuts Staff's testimony, generally arguing that the Company's overall projected transmission investment associated with the CEPP is currently approximately \$213.6 million, a figure only 4.7 percent above its \$204 million estimate in the 2016 ERP, and asserting that its contingency levels are reasonable.<sup>11</sup>

13. On May 26, 2020, Public Service and Staff filed the Joint Motion and a Notice of Settlement, Joint Motion to Vacate Procedural Schedule and Stay Proceeding, and Request for Shortened Response Time of One Day (Joint Motion to Vacate). In the Joint Motion to Vacate,

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<sup>8</sup> Proceeding No. 19A-0728E, Decision No. R20-0142-I at page 4.

<sup>9</sup> *Id.*

<sup>10</sup> See Proceeding No. 19A-0728E, Adam Gribb Answer Testimony at pages 11, 29, 46.

<sup>11</sup> See Proceeding No. 19A-0728E, Thomas Green Rebuttal Testimony at pages 18-19.

Public Service and Staff request that the schedule in Proceeding No. 19A-0728E, including the hearing scheduled for June 1 and 2, 2020, be vacated, the proceeding be stayed, and the response time to the Joint Motion to Vacate and Stay be shortened to May 27, 2020 “so that [the ALJ] can rule on this Motion at the May 28, 2020 pre-hearing conference.”<sup>12</sup>

14. On May 27, 2020, the OCC filed its Response to the Joint Motion to Vacate, stating that it does not object to vacating the procedural schedule or staying the procedure.<sup>13</sup> The OCC made clear, however, that it does not waive its objections to the Joint Motion to Consolidate or the procedural schedule proposed therein.<sup>14</sup>

15. On May 28, 2020, the ALJ convened the previously scheduled prehearing conference. At the prehearing conference, the ALJ vacated the hearings scheduled for June 1 and 2, 2020. However, because Public Service did not waive the October 5, 2020 statutory deadline for Proceeding No. 19A-0728E, the ALJ set a new hearing for June 8 and-9, 2020, pending the Commission’s decision on the Joint Motion.<sup>15</sup>

## **2. Proceeding No. 20A-0063E GDT CPCN**

16. On February 21, 2020, Public Service filed an Application in Proceeding No. 20A-0063E for a CPCN regarding a proposed Greenwood to Denver Terminal 230 kV Transmission Project and three associated transmission line uprate projects (the GDT CPCN). The Company included the Direct Testimony of Parker Wrozek, Thomas Green, and Carly Rowe with its application. As with the Voltage Control CPCN, Public Service asserts that the transmission projects proposed in the GDT CPCN are needed to implement the 2016 ERP and CEP Portfolio.<sup>16</sup>

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<sup>12</sup> Proceeding No. 19A-0728E, Joint Motion to Vacate and Stay at page 6.

<sup>13</sup> Proceeding No. 19A-0728E, OCC Response to Joint Motion to Vacate at pages 1-2.

<sup>14</sup> *Id.*

<sup>15</sup> See Proceeding No. 19A-0728E, Decision R20-0412-I Mailed June 1, 2020.

<sup>16</sup> Proceeding No. 20A-0063E, Application at page 2.

In particular, Public Service argues that, with the additional generation facilities associated with Public Service's CEP Portfolio coming online, the transmission projects proposed in the GDT CPCN provide a necessary alternative transmission path into the Denver Metro load center. Without the additional transmission path, Public Service asserts that there is the potential for overloading on numerous lines during high generation dispatch conditions, particularly from the new renewable generation resources located near Public Service's Comanche and Missile Site Substations.<sup>17</sup> Public Service estimates that the GDT CPCN will cost approximately \$50.1 million (plus or minus 20 percent) and that the three uprates will cost approximately \$1.8 million (plus or minus 20 percent).<sup>18</sup>

17. On March 17, 2020, Staff filed a notice of intervention as of right, and, on March 25, 2020, the OCC followed with its own intervention notice. In its intervention notice, Staff requests a hearing to address several issues, including alternatives to the proposed CPCN and whether the Commission should consolidate this application with the Voltage Control CPCN.<sup>19</sup> Similarly, in the OCC's intervention notice, the OCC requests a hearing to address issues such as whether the GDT CPCN is just and reasonable and in the public interest and whether Public Service minimized costs by using existing equipment to the maximum extent possible.<sup>20</sup>

18. On April 1, 2020, the Commission deemed Public Service's GDT CPCN Application complete and referred the proceeding to an ALJ by minute entry.

19. By Decision No. R20-0359-I, ALJ established the procedural schedule including the requirement to file Answer Testimony on June 10, 2020, and Rebuttal and Cross-Answer

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<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* at 2.

<sup>19</sup> Proceeding No. 20A-0063E, Notice of Intervention as of Right by Staff at pages 1-2.

<sup>20</sup> Proceeding No. 20A-0063E, Notice of Intervention of Right by OCC at pages 2-3.

Testimony on June 30, 2020.<sup>21</sup> In addition, the ALJ scheduled an evidentiary hearing for July 23 and 24, 2020.<sup>22</sup> In the decision, the ALJ notes that the deadline for the Commission to issue a decision regarding the GDT CPCN is December 7, 2020.<sup>23</sup>

20. On May 26, 2020 Public Service and Staff filed the same Joint Motion in Proceeding 20A-0063E as they filed in Proceeding 19A-0728E. Unlike in Proceeding No. 19A-0728E, the parties have not yet filed Answer or Rebuttal Testimony in the GDT CPCN proceeding and Public Service and Staff have not requested that the ALJ vacate the hearing or stay the proceeding.

### 3. Settlement Agreement

21. In the Joint Motion, Public Service and Staff state that they reached a settlement in principle on May 22, 2020.<sup>24</sup> While Public Service and Staff note that they plan to submit additional testimony in support of the Settlement Agreement, they provide a summary of the Settlement Agreement's main points and include the Settlement Agreement as an attachment.<sup>25</sup>

22. The Settlement Agreement calls for the Commission to approve both the Voltage Control CPCN and the GDT CPCN and to find that the expected maximum magnetic field and noise levels associated with both CPCNs are reasonable and require no further mitigation or prudent avoidance measures.<sup>26</sup>

23. In addition, the Settlement Agreement provides that the anticipated costs of both the Voltage Control CPCN and the GDT CPCN—as well as a 10 percent contingency range—are

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<sup>21</sup> Proceeding No. 20A-0063E, Decision No. R20-0359-I at page 5.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 3.

<sup>24</sup> Joint Motion to Consolidate at page 6.

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.* at 7-9.

entitled to a presumption of prudence.<sup>27</sup> Specifically, the costs to be presumed prudent are \$93.6 million for the voltage control facilities, \$51.9 million for the transmission projects associated with the GDT CPCN, and a 10 percent contingency range for the two projects on a combined, portfolio basis.<sup>28</sup> Thus, the total portfolio cost for both the Voltage Control CPCN and the GDT CPCN that would be presumed prudent is \$160.05 million<sup>29</sup>

24. Finally, the Settlement Agreement contains certain reporting and conferral requirements. In particular, the Settlement agreement requires Public Service to file semi-annual reports describing how the projects associated with the Voltage Control CPCN and the GDT CPCN are progressing and whether there are any material changes to the projected costs and timelines.<sup>30</sup> Public Service must file the reports on August 1 and February 1 of each year, beginning August 1, 2020, and concluding within six months after all projects are placed in service.<sup>31</sup> Regarding the conferral requirements, the Settlement Agreement requires that Public Service and Staff to confer before Public Service files a future CPCN application for interconnection facilities related to the CEP Portfolio.<sup>32</sup> Public Service must preview the relief it plans to request in this future CPCN along with the associated supporting information and solicit feedback from Staff.<sup>33</sup> Additionally, Public Service will meet with Staff to discuss future transmission projects associated with the 120-Day Report in Public Service's next ERP, and Public Service will update Staff on its transmission planning efforts related to the clean energy targets set forth in § 40-2-125.5(3)(I), C.R.S.<sup>34</sup>

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<sup>27</sup> *Id.* at 8-9.

<sup>28</sup> *Id.*

<sup>29</sup> \$93.6 million + \$51.9 million + a contingency of \$14.55 million.

<sup>30</sup> *Id.* at 9.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 10.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*



#### 4. Joint Motion

25. In the Joint Motion, Public Service and Staff specifically request the following: (1) consolidate Proceeding Nos. 19A-0728E and 20A-0063E; (2) hear the consolidated proceeding *en banc*; (3) approve the procedural schedule set forth in the Joint Motion; (4) issue a decision on the Joint Motion on or before Wednesday, June 3, 2020; and (5) shorten the response time to the Joint Motion to Friday, May 29, 2020.<sup>35</sup>

26. Regarding the request for consolidation, the Settling Parties note that both proceedings involve CPCNs for transmission projects required to implement the CEP Portfolio and that the parties in both proceedings are identical.<sup>36</sup> The Settling Parties further argue both proceedings involve substantially similar issues and that “consolidation is necessary at this time to allow for global consideration of the interrelated issues and cost considerations resolved in the Settlement Agreement.”<sup>37</sup>

27. As for the request that the Commission hear the consolidated proceeding *en banc*, the Settling Parties argue that Public Service’s 2016 ERP—the implementation of which requires the Voltage Control and GDT CPCNs—was litigated before the Commission *en banc* over the course of more than two years.<sup>38</sup> According to the Settling Parties, the transmission projects addressed in these proceedings are critical to interconnect “the large amounts of clean generation resources encouraged by state policy directives and approved by the Commission through the [CEP Portfolio].”<sup>39</sup> Finally, Settling Parties assert that some elements of the Voltage Control CPCN are scheduled to go in service this summer and, therefore, “time is of the essence.”<sup>40</sup> The Settling

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<sup>35</sup> *Id.* at 14.

<sup>36</sup> *Id.* at 11.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 12.

Parties argue that hearing the consolidated proceeding *en banc* will “provide quicker and more efficient resolution of these issues, thus enabling greater system reliability sooner.”<sup>41</sup>

28. In the Joint Motion, the Settling Parties request that the Commission set the following procedural schedule for the consolidated hearing:

Procedural Event	Proposed Date/Deadline
Pre-filed simultaneous testimony in support of or opposition to Settlement Agreement	June 10, 2020
Responsive pre-filed testimony in support of Settlement Agreement ( <i>i.e.</i> , Public Service and Staff, as the proponents of the Settlement Agreement)	June 30, 2020
Prehearing motions	July 13, 2020
Corrections to pre-filed testimony and responses to prehearing motions	July 17, 2020
Hearing on Settlement Agreement	July 23-24, 2020 <sup>42</sup>

29. The Settling Parties note that the proposed dates reflect existing deadlines that the ALJ set for the GDT CPCN in Proceeding No. 20A-0063E.<sup>43</sup>

30. Finally, the Settling Parties request that the Commission rule on the Joint Motion at the Commissioners’ Weekly Meeting on June 3, 2020.<sup>44</sup> The Settling Parties note that Proceeding No. 19A-0728E and Proceeding No. 20A-0063E both have established deadlines and that a prompt decision on the Motion “will provide the parties and hearing examiners with greater certainty going forward regarding procedural deadlines.”<sup>45</sup> Additionally, the Settling Parties

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<sup>41</sup> *Id.* Public Service and Staff argue in the alternative that if the Commission elects not to hear the consolidated proceeding *en banc*, then the Commission should direct an ALJ to conduct an evidentiary hearing but then issue an initial decision per Rule 1404(b).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 12-13.

<sup>44</sup> *Id.* at 14.

<sup>45</sup> *Id.* at 13.

indicate that ruling on the Motion by June 3 will help Public Service to “expeditiously proceed with its construction timelines for the projects” associated with the CPCNs.<sup>46</sup>

### 5. OCC Response in Opposition to the Joint Motion

31. The OCC opposes consolidation of the two proceedings, asserting that the timelines of the two cases are very different and that the OCC would be prejudiced by the proposed procedural schedule.<sup>47</sup> The OCC agrees with the Settling Parties that Rule 1402 allows for consolidation “where the issues are substantially similar and the rights of the parties will not be prejudiced.”<sup>48</sup> However, the OCC asserts that the two cases are not “substantially similar,” but rather are “quite different in timing, cost, scope, and complexity.”<sup>49</sup> The OCC notes that Public Service initially chose to apply for the CPCNs in two separate proceedings and that the projects do not “impact the same stations or require coordinated design or construction efforts.”<sup>50</sup> Further, the OCC asserts that the costs or activity in one project does not impact the costs or activity in the other project.<sup>51</sup>

32. The OCC also disagrees with the Settling Parties’ assertion that project timing would be improved by consolidating the two cases. The OCC notes that the Voltage Control CPCN could be resolved faster by maintaining its separate and earlier hearing date, without consolidation.<sup>52</sup>

33. Finally, the OCC argues that the Settling Parties’ proposed consolidated procedural schedule is prejudicial. The OCC argues that it will have less than a week to prepare testimony for

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<sup>46</sup> *Id.*

<sup>47</sup> OCC Response at page 2-4.

<sup>48</sup> *Id.* at 2.

<sup>49</sup> *Id.* at 3.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 5.

the consolidated proceeding, while the Settling Parties due date for their responsive testimony allows them nearly three weeks of preparation time.<sup>53</sup> The OCC also raises concerns with Public Service's assertion that the earlier statutory deadline of October 5, 2020, for the Voltage Control CPCN must be used even though the Settling Parties propose to extend the procedural schedule beyond the hearing dates previously established Proceeding No. 19A-0728E.<sup>54</sup>

## 6. Settling Parties' Joint Motion for Leave to Reply and Reply

34. In a Joint Motion for Leave to Reply, filed on June 1, 2020 in Proceeding Nos. 19A-0728E and 20A-0063E, the Settling Parties argue that Rule 1400(e) permits a reply to the OCC's response.<sup>55</sup> The Settling Parties argue that a reply is warranted because the OCC's response contains material misrepresentations of fact and incorrect statements or errors of law.<sup>56</sup>

35. The Settling Parties generally disagree with the OCC's assertions that the two cases should not be consolidated. The Settling Parties note that both CPCNs directly relate to the \$204 million transmission investment that the 2016 ERP and CEP Portfolio contemplate.<sup>57</sup> The Settling Parties assert that "[b]oth of these projects are needed to deliver the CEPP to Public Service's customers."<sup>58</sup> The Settling Parties also argue that consolidation eliminates the risk of inconsistent decisions.<sup>59</sup> The Settling Parties assert that hearing the proceedings together "avoids the risk of different ALJs rendering different or conflicting decisions on all or portions of the Settlement Agreement."<sup>60</sup>

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<sup>53</sup> *Id.* at 4.

<sup>54</sup> *Id.* at 5.

<sup>55</sup> Joint Motion for Leave to Reply at pages 3-4.

<sup>56</sup> *Id.* at 3-6.

<sup>57</sup> *Id.* at 7.

<sup>58</sup> *Id.* at 8.

<sup>59</sup> *Id.* at 10.

<sup>60</sup> *Id.*

36. The Settling Parties also dispute the OCC's assertion that the proposed procedural schedule for the consolidated proceedings is prejudicial. The Settling Parties instead note that the "proposed procedural schedule would effectively grant OCC additional time to prepare for a hearing that relates to the Company's Voltage Control Facilities CPCN; while OCC did not file Answer Testimony in Proceeding No. 19A-0728E, it would now have another opportunity to present written testimony addressing the CPCN at issue in that case."<sup>61</sup>

37. The Settling Parties similarly take issue with the OCC's assertion that, under the proposed procedural schedule, the OCC will have less than a week to prepare testimony: "OCC had approximately four months to prepare Answer Testimony in Proceeding No. 19A-0728E, and yet filed none. OCC has likewise had approximately three and a half months to prepare Answer Testimony in Proceeding No. 20A-0063E and that timeline is unchanged."<sup>62</sup>

### **C. Discussion and Findings**

38. First, we rescind the referrals of Proceeding Nos. 19A-0728E and 20A-0063E for the purpose of considering the Joint Motion and related pleadings.

39. Second, we address the Joint Motion for Leave to Reply. Rule 1400(e) provides that a motion for leave to reply must demonstrate the following: (I) a material misrepresentation of fact; (II) accident or surprise, which ordinary prudence could not have guarded against; (III) newly discovered facts or issues, material for the moving party which that party could not, with reasonable diligence, have discovered at the time the motion was filed; or (IV) an incorrect statement or error of law.

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<sup>61</sup> *Id.* at 12-13.

<sup>62</sup> *Id.* at 13.

40. Although we are concerned with the 18-page length of the Joint Motion for Leave to Reply, we find that the Settling Parties demonstrate that the OCC's response contains a material misrepresentation of fact. Specifically, the OCC argues that the proposed procedural schedule is prejudicial because the OCC will have less than a week to prepare testimony for the consolidated proceeding and that it will be preparing for a hearing in early June for Proceeding No. 19A-0728E while, preparing answer discovery in anticipation of answer testimony in Proceeding No. 20A-0063E.<sup>63</sup> As the Settling Parties point out, however, the OCC had four months to prepare Answer Testimony in Proceeding No. 19A-0728E, but declined to do so, and had approximately three and a half months to prepare Answer Testimony in Proceeding No. 20A-0063E. We agree with the Settling Parties that the OCC will actually have a similar amount of time to prepare testimony addressing the issues in Proceeding No. 20A-0063E and have a second chance to file Answer Testimony regarding the issues in Proceeding No. 19A-0728E. This is especially persuasive given the fact that the OCC "has been on notice of (and participated in) settlement negotiations since May 11, 2020."<sup>64</sup> Accordingly, we grant the Joint Motion for Leave to Reply and accept the Settling Parties' Reply.

41. Next, we agree with the Settling Parties that consolidation of Proceeding Nos. 19A-0728E and 20A-0063E is warranted. Both proceedings relate to the 2016 ERP and the CEP Portfolio. Consolidation will allow the Commission to consider the overall estimated budget for the 2016 ERP transmission requirements in addition to considering the individual project costs. Though there are dissimilarities between the projects and timing of the two cases, we are convinced

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<sup>63</sup> OCC Response at page 4.

<sup>64</sup> Joint Motion for Leave to Reply at page 13.

the potential benefits of consolidation outweigh the detriments. We therefore consolidate Proceeding Nos. 19A-0728E and 20A-0063E.

42. We further agree with Public Service and Staff that completion of this case can be expedited by hearing the case *en banc*. An *en banc* hearing avoids the extra steps of a recommended decision, exceptions, and responses to exceptions. Hearing the case *en banc* allows us to endeavor to issue a decision by the statutory deadline. Further, the issues in these proceedings raise important policy concerns about cost treatment between Electric Resource Planning and CPCN proceedings that can best be addressed together before the Commission *en banc*. Therefore, we will hear the consolidated proceeding *en banc*.

43. We have concerns about the procedural schedule as proposed in the Joint Motion. Although OCC has had ample time to develop its case for the separate Volt Control and GDT proceedings, we agree with the OCC that requiring it to file testimony in opposition to the Settlement Agreement by June 10, 2020 is unreasonable. This is especially so given that the proposed procedural schedule would require the OCC to file its testimony simultaneously with the Settling Parties’ testimony. Therefore, we adopt the following schedule:

Procedural Event	Proposed Date/Deadline
Pre-filed testimony in support of Settlement Agreement	June 10, 2020
Pre-filed testimony in opposition to Settlement Agreement	June 24, 2020
Responsive pre-filed testimony in support of Settlement Agreement ( <i>i.e.</i> , Public Service and Staff, as the proponents of the Settlement Agreement)	July 8, 2020
Prehearing motions	July 13, 2020
Corrections to pre-filed testimony and responses to prehearing motions	July 17, 2020

Hearing on Settlement Agreement	July 23-24, 2020
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44. Regarding the evidentiary hearing scheduled for July 23 and 24, 2020, we note that in-person hearings at the Commission's offices are currently suspended. Thus, we find that at this time, it is in the parties' interests to plan and prepare for a remote video-conference evidentiary hearing. Doing so is also consistent with public health advisories to prevent the spread of COVID-19. We will provide the detailed requirements for the remote hearings in a future order.

45. In order to clarify the procedural record, we also deny as moot the request for shortened response time to the Joint Motion; we vacate the June 8, 2020 hearing and all procedural deadlines that the ALJs previously set in Proceeding Nos. 19A-0728E and 20A-0063E; and we defer ruling on the ultimate request in the Joint Motion to approve the Settlement Agreement. Lastly, because this Decision reflects the rulings that the Commission issued from the bench at its June 3, 2020, Commission Weekly Meeting, we also deny as moot the Settling Parties' request for a decision on the Joint Motion on or before Wednesday, June 3, 2020.

## II. ORDER

### A. **It Is Ordered That:**

1. The referral to an Administrative Law Judge (ALJ) of Proceeding No. 19A-0728 is rescinded.
2. The referral to an ALJ of Proceeding No. 20A-0063E is rescinded.
3. The hearings and all procedural deadlines that the ALJs previously set in Proceeding Nos. 19A-0728E and 20A-0063E are vacated.
4. The Joint Motion to Approve Settlement, Consolidate Proceedings, Hear Consolidated Proceeding *En Banc*, Approve Procedural Schedule, and Shorten Response Time



(Joint Motion) filed in Proceeding Nos. 19A-0728 and 20A-0063 by Public Service Company of Colorado (Public Service) and Staff of the Colorado Public Utilities Commission (Staff) on May 26, 2020 is granted, in part, consistent with the discussion above.

5. The Joint Motion for Leave to Reply and Reply filed in Proceeding Nos. 19A-0728E and 20A-0063E by Public Service and Staff on June 1, 2020, is granted.

6. Proceeding Nos. 19A-0728E and 20A-0063E are consolidated. Proceeding No. 19A-0728E shall serve as the primary proceeding.

7. The consolidated matter will be heard *en banc*.

8. The procedural schedule proposed in the Joint Motion is modified as set forth above, and a remote evidentiary hearing in the consolidated proceedings is scheduled on July 23 and 24, 2020. Start times and procedures for the evidentiary hearing will be established by separate decision.

9. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
June 3, 2020.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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JOHN GAVAN

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MEGAN M. GILMAN

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Commissioners