

Decision No. C22-0635-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22V-0388E

IN THE MATTER OF PETITION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF A VARIANCE FROM RULE 3615 RELATED TO MODIFYING EXISTING AGREEMENTS TO ACQUIRE MORE THAN 30 MW OF CAPACITY OUTSIDE OF AN APPROVED RESOURCE PLAN.

**INTERIM DECISION ESTABLISHING PROCEDURAL
SCHEDULE, GRANTING MOTION FOR
EXTRAORDINARY PROTECTION, AND GRANTING
MOTION TO APPEAR PRO HAC VICE**

Mailed Date: October 21, 2022
Adopted Date: October 19, 2022

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission: (1) adopts the consensus procedural schedule provided to the Commission on October 4, 2022, as discussed below; (1) grants the request for Anne E. Callenbach to appear *pro hac vice* on behalf of Neptune Solar, LLC (Neptune) and Thunder Wolf Solar, LLC (Thunder Wolf);¹ and (3) grants the motion filed by Neptune and Solar that seeks extraordinary protection for sensitive bidding data requested in discovery by the Utility Customer Advocates (UCA) from Public Service Company of Colorado (Public Service or Company).

¹ Through various pleadings, Neptune and Thunder Wolf title the companies “Neptune Energy Center, LLC” and “Thunder Wolf Energy Center, LLC.” Consistent with Decision No. C22-0583-I, issued September 29, 2022, the Commission understands Neptune and Thunder Wolf to be the same companies identified and granted intervention in this proceeding.

B. Background

2. On September 2, 2022, Public Service filed a petition for partial variance or a waiver from subparagraph 3615(a)(VI) of the Commission’s Electric Resource Planning (ERP) Rules, 4 *Code of Colorado Regulations* (CCR) 723-3. The Company states the partial variance is necessary to enable the addition of more than 30 MW of nameplate solar capacity to two existing Power Purchase Agreements (PPAs) originally approved by the Commission as part of the Company’s Colorado Energy Plan Portfolio (CEPP). The Company argues that the requested variance is critical to serving the Company’s customers and meeting its resource adequacy needs in 2023 and 2024, as it will result in 123 MW of additional nameplate solar capacity at a cost-effective price for customers.

3. Through Decision No. C22-0532-I, issued September 8, 2022, the Commission established a shortened notice and intervention period, with requests for intervention due no later than September 21, 2022. Through Decision No. C22-0583-I, issued September 29, 2022, the Commission recognized established parties to the proceeding, including UCA, Staff of the Colorado Public Utilities Commission, and Neptune and Thunder Wolf that filed jointly. Neptune and Thunder Wolf identify that they are the entities that renegotiated the PPAs that are subject of this Proceeding.

4. As also required by Decision No. C22-0583-I, the Company conferred with the established parties and filed a Notice of Proposed Procedural schedule on October 4, 2022, which includes the following:

Date	Procedural Activity
October 24, 2022	Answer briefs due (UCA and Staff)
November 7, 2022	Reply briefs due (Public Service, Neptune and Thunder Wolf)
November 15, 2022	Settlement deadline

November 18, 2022	<i>En banc</i> hearing
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5. Parties further agree to a five business day discovery turnaround with reasonable extensions.

6. On October 7, 2022, Neptune and Thunder Wolf filed a motion seeking extraordinary protection for certain contractual and bid information, which was sought by the UCA in discovery. The filing states that UCA requests PPAs, contracts, side letters, pricing, calculations, and other bid information. The movants represent that the requested information is confidential, proprietary, and commercially sensitive information that includes cost structures of facilities and future projects, and that disclosure of the requested information would create competitive disadvantage in future solicitations.

7. On October 10, 2022,² Anne E. Callenbach provided a motion to appear *pro hac vice* as counsel for Neptune and Thunder Wolf. Ms. Callenbach represents that she is in good standing as an attorney in Missouri and Kansas, designates Mr. Colin Deihi who has entered an appearance in this case as the associate attorney licensed in Colorado, and includes the required statements under Colorado Rules of Civil Procedure (CRCP) 205.4 and 205.3. Concurrent with the motion, Ms. Callenbach includes an affidavit attesting to her qualifications and compliance. Proof of *pro hac vice* registration in Colorado and payment of the necessary fees was provided in the proceeding on October 4, 2024.

C. Findings and Conclusions

8. We agree that the proposed schedule provided by the Company in its October 4, 2022 notice is reasonable for purposes of this proceeding. We adopt the proposed schedule to

² Pleadings filed list the submission date of the “21st day of September, 2022.” Pleadings were received through the Commission’s e-filings system on October 10, 2022.

establish the briefing schedule, settlement deadline, and set a remote *en banc* hearing for Friday, November 18, 2022, and accept the shortened discovery response time described in the pleading. The settlement deadline on Tuesday, November 15, 2022, shall be set for 12:00 p.m. such that the Commission can have the opportunity to review filings, if any, and potentially consider if any discussion items need to be added to the following day's regularly scheduled weekly meeting that proceeds the Friday, November 18, 2022, remote hearing date.

9. As agreed to by the parties, the evidentiary hearing shall be scheduled for November 18, 2022. The hearing will be conducted as a remote hearing. This Decision and Attachments A and B provide critical information and instructions to facilitate holding the remote hearing, which all parties must follow.

10. To minimize the potential that the remote hearing may be disrupted by non-participants, the link, meeting ID code and passcode to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

11. Attachment A to this Decision provides the information addressing how to use the Zoom platform for remotely participating in the hearing. Attachment B outlines procedures and requirements for marking and formatting exhibits to facilitate the efficient and smooth electronic evidence presentation at the hybrid hearing. It is extremely important that the parties review and follow all requirements in this Decision and Attachments A and B.

12. In its initial filings, the Company included information regarding the solar panel supplier for these projects, Trina Solar (U.S.), Inc. (Trina Solar), which through an agreement with Thunder Work and Neptune, guarantees the supply of enough panels to meet the needs at both projects. The initial pleading states that the agreement with Trina Solar commits the supplier to a

delivery schedule for the panels and, “to-date, Trina Solar has successfully navigated challenges related to Withhold Release Orders and Uyghur Forced Labor Prevention Act (UFLP) provisions.”³

13. It is unclear whether the panels supplied by Trina Solar are in the United States, or if there is a firm plan and schedule for the panels to achieve entry into the United States and be ultimately delivered to Colorado given the mentioned UFLP concerns. The Company’s initial pleadings also raise the question whether there are liquidated damages surrounding in-service dates, and specifically if panel delays due to forced labor concerns under the UFPLA would exempt the project from liquidated damages, affect the PPAs, or cause other concerns.

14. In considering the briefing schedule, we do not require additional testimony at this time. However, through the course of the proceeding – in briefing, potential settlement, and hearing – we anticipate and expect further information will be raised pertinent to these statements.

15. The briefing schedule proposed is adopted and a remote evidentiary hearing is scheduled for November 18, 2022.

16. We also find good cause to grant the requested motion for extraordinary protection, filed October 7, 2022. Pursuant to Rule 4 *Code of Colorado Regulations* 723-1-1101(b) of the Commission’s Rules of Practice and Procedure, a party that believes information requires extraordinary protection beyond the protection afforded to confidential information, may file a motion requesting highly confidential protection. The motion must include a detailed description or representative sample of the information sought to be protected. In addition, the motion must show the information is highly confidential, that the protection afforded by the Commission’s rules for confidential information is insufficient, and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection. Finally, the motion must include an

³ Petition at ¶ 15.

exhibit containing the information sought to be protected (or show why providing the information would be overly burdensome, impractical, or too sensitive).

17. Neptune and Thunder Wolf make the necessary showing to demonstrate the need to protect the bidding and related information identified. As requested, the Commission grants the requested extraordinary protection, consistent with prior Commission order, and limits party access as requested to: (1) the Commission; (2) Commission advisors and Commission advisory counsel; (3) Administrative Law Judges; (4) Commission Staff and its attorneys; and (5) the UCA staff and its attorneys.

18. Further and finally, we find good cause to grant the request for *pro hac vice* admission of Ms. Callenbach filed October 10, 2022. An attorney who is not licensed to practice law in Colorado must be granted permission to appear *pro hac vice* in a Commission proceeding. Under Commission Rule 1201(a) and Rules 205.4 and 205.3 of the Colorado Rules of Civil Procedure, to appear *pro hac vice* before a state agency, an out-of-state attorney must: file a motion with the relevant agency; file the motion with the Colorado Office of Attorney Registration; pay a fee; designate an associate attorney who is licensed in Colorado; and obtain permission from the agency.

19. Ms. Callenbach's filing, affidavits, and the provided proof of registration meet the necessary requirements. The motion is granted.

II. ORDER

A. It Is Ordered That:

1. The proposed schedule provided by Public Service Company of Colorado (Public Service or Company) on October 4, 2022, is adopted, consistent with the discussion above.

2. A remote evidentiary hearing in this proceeding is scheduled as follows:

DATE: November 18, 2022

TIME: 9:00 a.m. to 5:00 p.m.

WEBCAST: Hearing Room A

METHOD: Join by video conference using Zoom at the link to be provided via email

3. The motion for extraordinary protection filed by Neptune Solar, LLC (Neptune) and Thunder Wolf Solar, LLC on October 7, 2022, is granted.

4. The request to appear *pro hac vice* provided by Ms. Anne E. Callenbach on October 10, 2022, is granted.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 19, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners