Decision No. R24-0168

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0330E

IN THE MATTER OF APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF A NON-STANDARD EDR CONTRACT, AND FOR DETERMINATION NO CPCN IS NEEDED FOR CUSTOMER-FUNDED TRANSMISSION FACILITIES.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE G. HARRIS ADAMS GRANTING APPLICATION, IN PART, AND GRANTING CPCN FOR TRANSMISSION FACILITIES

Mailed Date: March 18, 2024

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I. STATEMENT

1. On June 23, 2023, Public Service Company of Colorado (Public Service or Company) filed its Application for Approval of a Non-Standard Economic Development Rate (EDR) Customer Service Agreement (EDR ESA), and for Determination No Certificate of Public Convenience and Necessity (CPCN) is Needed for Customer-Funded Transmission Facilities (Application).

2. Public Service requests that the Commission find that the EDR ESA with QTS Aurora Infrastructure, LLC (QTS) complies with the requirements of § 40-3-104.3, C.R.S., and with the relevant terms of a settlement agreement modified and approved by the Commission in Proceeding No. 20A-0345E (EDR Settlement) and therefore the EDR ESA with QTS should be approved without modification.

3. Public Service further requests a finding that that no CPCN is required for the facilities that will connect the planned data center campus in Aurora, Colorado (Aurora QTS Campus) to the Company's transmission system (collectively, the QTS Transmission Facilities). In the alternative and to the extent necessary, the Company requests the Commission grant the Company a CPCN to construct and to operate the QTS Transmission Facilities, finding that the QTS Transmission Facilities are reasonable and in the public interest. Consistent with Commission Rules 3206(e) and (f) of the Rules Regulating Electric Utilities, 4 *Code of Colorado*

Regulations (CCR) 723-3, the Company further requests the Commission enter an order finding the expected maximum magnetic field and noise levels associated with the QTS Transmission Facilities are reasonable and require no further mitigation or prudent avoidance measures.

4. Public Service also requests approval to track and defer expenses associated with preparing, filing, and litigating this proceeding for future recovery through the EDR ECA, consistent with the terms and conditions of the EDR Settlement and the compliance tariff implementing the EDR Settlement filed in Proceeding No. 21AL-0350E on July 20, 2021 (EDR Tariff).

A. Procedural Background

5. By Decision No. C23-0472-I, issued July 21, 2023, the Commission deemed the Application complete, concluded that Public Service failed to demonstrate sufficient cause to support the requested expedited procedures, and referred the matter to an Administrative Law Judge (ALJ) for issuance of a Recommended Decision.

6. By Decision No. C23-0478-I, issued July 26, 2023, the undersigned disclosed prior service as Interim Director of the Public Utilities Commission, from December 1, 2022, through April 30, 2023, out of an abundance of caution and to ensure all parties were aware that the undersigned interacted with others, including individuals involved in this proceeding and parties to this proceeding, in a different capacity than as a judge.

7. By Decision No. C23-0479-I, issued July 26, 2023, permissive interventions were granted, establishing the parties to the proceeding. The parties include Public Service, QTS, Trial Staff of the Commission (Staff), the Office of the Consumer Advocate (UCA), Climax Molybdenum Company (Climax), and the Colorado Energy Consumers (CEC).

8. By Decision No. R23-0524-I, issued August 8, 2023, a consensus procedural schedule was adopted to govern this proceeding and a remote evidentiary hearing was scheduled to commence on November 16, 2023.

9. By Decision No. R23-0731-I, issued October 30, 2023, the deadline for a Commission decision on the Application was extended an additional 130 days to accommodate the consensus procedural schedule.

10. By Decision No. R24-0163-I, issued March 18, 2024, the applicable statutory period was further extended for an additional 130 days, to and including August 4, 2024.

11. On October 31, 2023, Public Service filed a Motion to Strike Portions of the Answer Testimonies (Motion to Strike).

12. At the scheduled time and place, the hearing was convened. All parties appeared and participated at the hearing through counsel.

13. As a preliminary matter during the hearing, Public Service's Motion to Strike was granted, in part. The announced ruling was memorialized in Decision No. R23-0774-I, issued November 22, 2023.

14. During the course of the hearing, Hearing Exhibits 109, 111 through 115, 117 through 119, 121, 122, 124 through 128, 149, 153, 154, 204 through 207, 210 through 214, 305, 502, 504, 505, and 700 were admitted into evidence. Additionally, those hearing exhibits from the Commission's files and identified in Hearing Exhibit 700 were admitted by administrative notice.

15. At the conclusion of the hearing the ALJ took the matter under advisement.

16. In reaching this Recommended Decision the ALJ has considered all arguments presented by the parties, including those arguments not specifically addressed in this Decision.

Likewise, the ALJ has considered all evidence presented at the hearing, even if the evidence is not specifically addressed in this Decision.

17. Relevant public comment in this proceeding urges the Commission to ensure that other ratepayers will not subsidize EDR discounts and to require those using the new load to pay for the transmission for that load.

18. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits of this proceeding along with a written recommended decision.

B. Burden of Proof

19. As the Applicant, Public Service bears the burden of proof by a preponderance of the evidence with respect to the relief sought.[1] The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). This burden is met at the point when the evidence, on the whole, demonstrates more likely than not that relief should be granted.

20. As to an intervenor, the Commission has recognized that if "an intervenor advocates that the Commission adopt its position (for example, if an intervenor requests that a condition be placed on the authority granted), that intervenor must meet the same preponderance of the evidence burden of proof with respect to its advocated position."[2] Therefore, once Public Service demonstrates a *prima facie* case, the burden shifts to the opposing intervenors, here, UCA and Staff, to show that advocated conditions should be imposed.

[1] Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; and Rule 1500 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

[2] Decision No. C12-1107, Proceeding No. 11A-833E, issued September 24, 2012, at 9.

21. The Legislature also explicitly defined and assigned the burden of proof for approval of an EDR to the utility in § 40-3-104(6)(c)(II), C.R.S.

C. Legal Standard

22. House Bill 18-1271 amended § 40-3-104, C.R.S. (EDR Statute) to authorize (but not require) economic development electric rates to be charged by electric utilities to certain nonresidential customers.[3]

23. The Legislature required that EDR rates:

> be lower than the rate or rates that the qualifying commercial or industrial customer would be or currently is subject to under the utility's tariffs in effect at the time the qualifying commercial or industrial customer seeks to qualify for the economic development rate; except that an economic development rate must not be lower than the utility's marginal cost of providing service to the qualifying commercial or industrial customer.[4]

24. The EDR Statute does not provide any cap on the load served by an EDR. However, the addition or expansion of existing load at a single location that is greater than 20 MW requires separate approval.[5]

25. The term of an EDR may be up to 10 years.[6]

26. As applied here, QTS must locate commercial or industrial operations in Colorado, add at least three megawatts of new load at a single location, and demonstrate "to the satisfaction of the investor-owned utility, subject to review by the commission," that:

> the cost of electricity is a critical consideration in deciding where to locate new or expand existing operations; and the availability of economic development rates, either on their own or in combination with other economic development incentives, is a substantial factor in the customer's decision to locate new or expand existing business operations in Colorado.[7]

[3] § 40-3-104(6)(a) C.R.S.
[4] § 40-3-104(6)(b)(i), C.R.S.
[5] § 40-3-104(6)(b)(II)(B) C.R.S.
[6] § 40-3-104(6)(b)(III) C.R.S.
[7] § 40-3-104(7)(a) C.R.S.

27. Additionally, to be eligible here, QTS must not be a customer relocating or otherwise transferring its existing load of at least three megawatts from the service territory of another public utility into Public Service's service territory.[8]

28. Finally, if the EDR ESA with QTS is approved, the Commission:

> must include such terms and conditions as the commission determines are necessary to ensure that the economic development rates or charges assessed to other customers do not subsidize the cost of providing service to qualifying commercial and industrial customers consistent with subsection (6)(b)(i) of this section, and that there is no other subsidization of such service. In developing the terms and conditions, the commission shall consider, among other things, the rates and charges assessed to the utility's wholesale customers and the effects on other transmission system owners and users resulting from new transmission facilities constructed in connection with the utility's expansion of an existing voluntary renewable energy program or service offering.[9]

29. The Supreme Court laid out the principles of statutory interpretation that the Commission must follow:

> As with any statute, we endeavor to interpret the provisions of section 16-5-205.5 in strict accordance with the General Assembly's purpose and intent in enacting them. *Empire Lodge Homeowners Ass'n v. Moyer*, 39 P.3d 1139, 1152 (Colo. 2001). To discern that intent, we look first to the statute's plain language. *Bd. of County Comm'rs v. Costilla County*, 88 P.3d 1188, 1193 (Colo. 2004). Where the language of the statute is plain and clear, we must apply the statute as written. *Univex Int'l, Inc. v. Orix Credit Alliance, Inc.*, 914 P.2d 1355, 1358 (Colo. 1996). Only where the wording in the statute is unclear and ambiguous will we resort to other modes of construction, such as relying on legislative history. *Colo. Dep't of Labor & Employment v. Esser*, 30 P.3d 189, 195 (Colo. 2001). [**9]
>
> Generally, an ambiguity exists in a statute only where at least one of its terms is susceptible to multiple meanings. *See Mountain City Meat Co. v. Oqueda*, 919 P.2d 246, 252-53 (Colo. 1996) (superseded by statute on different grounds as stated in *United Airlines, Inc. v. Indus. Claim Appeals Office*, 993 P.2d 1152, 1158 (Colo. 2000)). Where a statute is silent on a certain matter and that silence prevents a reasonable application of the statute, we must endeavor to interpret and apply the statute despite that silence all the while striving "to effectuate the General Assembly's intent

[8] § 40-3-104(7)(a)(II) C.R.S.
[9] § 40-3-104(7)(c)(I) C.R.S.

> and the beneficial purpose of the legislative measure." *In re Estate of Royal*, 826 P.2d 1236, 1238 (Colo. 1992). If, however, a statute can be construed and applied as written, the legislature's silence on collateral matters is not this court's concern, see *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542, 545 (Colo. 1995) (superseded by statute on different grounds as stated in *Colo. Springs Disposal v. Indus. Claim Appeals Office*, 58 P.3d 1061 (Colo. App. 2002)), for we will not strain to construe a statute unless necessary [**10] to avoid an absurd result, *City of Westminster v. Dogan Constr. Co.*, 930 P.2d 585, 590 (Colo. 1997).[10]

30. Courts generally do not resort to a legislative declaration when a statute is unambiguous.[11]

D. Related EDR Proceedings

31. The Commission previously applied the EDR Statute in Decision Nos. C19-0446 and C19-0656, issued May 28, 2019, and August 1, 2019, respectively, in Proceeding No. 18A-0791E, and in Decision No. C21-0333, issued June 7, 2021, approving the EDR Settlement in Proceeding No. 21AL-0350E.

1. Proceeding No. 18A-0791E

32. In Decision No. C19-0446, the Commission addressed proposals from Black Hills Colorado Electric, LLC (Black Hills) that applied provisions in the EDR Statute. Notably, the Commission considered factors outside of the scope advocated by Public Service and QTS to be controlling in this proceeding: "In considering whether to approve the Service Agreement we are cognizant of the need for economic development in Pueblo and the intervenors' and public support for this proposal to bring in new jobs and monies to this area."[12] The Commission also acknowledged the need to reconcile Black Hills' proposed service agreement between the various state policies.[13] It is also noteworthy that other statutes potentially apply to EDRs even though not

[10] In re 2000-2001 Dist. Grand Jury, 97 P.3d 921, 924 (Colo. 2004).
[11] Lester v. Career Bldg. Acad., 2014 COA 88, ¶ 23, 338 P.3d 1054, 1059.
[12] Decision No. C19-0446, Proceeding No. 18A-0791E, et. al., issued April 24, 2019, at 30.
[13] Decision No. C19-0446, at 34.

expressed in the EDR Statute. Illustratively, the Commission will promulgate rules pursuant to § 40-2-108(3)(b), C.R.S., requiring consideration of how best to provide equity, minimize impacts, and prioritize benefits to disproportionately impacted communities and address historical inequalities.

33. As stated in Paragraph 34 of Decision No. C19-0446 addressing §§ 40-6-104.3(6) and (7), C.R.S., "[t]he marginal cost floor in this subsection has no limiting time component. This accords with other provisions in the statute prohibiting subsidization, which also have no time component. Thus, to approve a specific negotiated agreement, the utility must reasonably show the EDR rate is and will continue to be at or above marginal cost over the entire term of the agreement."

34. In Decision No. C19-0656, the Commission addressed Applications for Rehearing, Reargument, or Reconsideration of Decision No. C19-0446. The Commission affirmed applicability of its broad constitutional and statutory authority to regulate public utilities and that nothing in the EDR Statute specifically limits that authority or precludes the Commission from exercising that authority when considering an EDR tariff or service agreement.[14]

2. Proceeding No. 20A-0345E

35. Reviewing the Company's previous application filed pursuant to the EDR Statute, the Commission clearly acknowledged that "an EDR program comprising a Standard EDR Contract and a Non-Standard EDR Contract" was at issue in that proceeding.[15] Nevertheless, there is substantial dispute among the parties in this proceeding as to the scope and applicability of Decision No. C21-0333 approving the EDR Settlement.

[14] Decision No. C19-0656, at ¶23.
[15] Decision No. C21-0333, Proceeding No. 20A-0345E, issued June 7, 2021, at ¶27.

36. Parties to the EDR Settlement conditionally reserved the right to withdraw from the partial settlement at issue, did not concede the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated, and did not agree that any principle or methodology contained within or used to reach the Settlement Agreement may be applied to any situation other than Proceeding No. 20A-0345E, except as expressly set forth in the settlement.[16] Approval of the settlement by the Commission did not have a precedential effect upon other Commission matters.[17]

37. Addressing the Standard EDR proposal presented in Proceeding No. 20A-0345E, the Commission acknowledged "[t]he EDR Tariff provides discounts in the form of a base rate discount and the non-applicability of certain rate riders." The declining discount based upon the term of the Standard EDR Contract term "would apply to generation and transmission demand charges, distribution demand charges, and volumetric energy charges, where applicable, but would not apply to the monthly service and facilities charge."[18] In the following paragraph, without specifying the scope of applicability, the Commission stated "[i]n addition to the base rate discount, Public Service also proposed EDR customers would not pay the following rate riders."[19]

38. Reviewing the terms of the EDR Settlement, the Commission agreed: "Standard EDR Contract customers are required to contribute to the following rate riders: the Renewable Energy Standard Adjustment (RESA); the Colorado Energy Plan Adjustment; the General Rate Schedule Adjustments (GRSA and GRSA-E); the Transportation Electrification Programs Adjustment; a modified full cost Demand Side Management Cost Adjustment (DSMCA); a

[16] Appendix A to Decision No. C21-0333, at 19.
[17] *See* Colorado Ute Elec. Ass'n, Inc. v. PUC, 602 P.2d 861, 865 (Colo. 1979); and B & M Serv., Inc. v. PUC, 429 P.2d 293, 296 (Colo. 1967).
[18] Decision No. C21-0333, at ¶29.
[19] Decision No. C21-0333, at ¶30.

modified EDR Electric Commodity Adjustment (EDR ECA) Factor; and the Clean Energy Plan Rider (CEPA), once approved. These customers are not subject to the Company's PCCA, TCA, or CACJA riders."[20]

39. The context of Decision No. C22-0333 makes clear that the Commission's discussion of riders applies to Standard EDR Customers. After further addressing Standard EDR Customers in paragraph 31, the Commission states in paragraph 32: "[t]urning to Non-Standard EDR Contracts, Public Service proposes that they would be available case-by-case to qualifying EDR customers seeking to add or expand load over 20 MW. The rates and terms of these contracts would be individually negotiated."[21]

40. Finally, it is clear that proposed reporting would encompass EDR customers taking service under both Standard and Non-Standard EDR Contracts.[22]

41. In the entire section of the decision summarizing the EDR Settlement, the Commission did not refer to Non-Standard EDR Contracts or Customers.

42. The Commission discussed a necessary clarification to the treatment of riders:

> Second, we find additional clarification is warranted related to the treatment of adjustments and riders due to the Commission's ongoing statutory responsibility to ensure that non-EDR customers do not subsidize EDR customers. The Settlement Agreement identifies the rate riders applicable to EDR customers and provides that any future riders proposed by the Company to be applicable to EDR customers will be evaluated case-by-case as part of relevant future Commission proceeding(s). We approve this term as reasonable and appropriate. However, the Commission is required to monitor the treatment and applicability of riders designed to recover Company investment between rate cases; the Settlement Agreement cannot tie the future hands of the Commission in that ongoing role. Notwithstanding the Settling Parties' agreement, statutory requirements control and would apply in any future Commission proceedings. For example, § 40-3-104.3(6)(b)(I), C.R.S., requires that a utility's EDR rate not be lower than the utility's marginal cost, and § 40-3-104.3(6)(c)(II),

[20] Decision No. C21-0333, at ¶53.
[21] Decision No. C21-0333, at ¶32.
[22] Decision No. C21-0333, at ¶36.

> C.R.S., requires the utility to establish, in a Commission proceeding related to EDRs, that the rates assessed to EDR customers do not result in prohibited subsidization by non-EDR customers. We note therefore a material change to an existing rider could warrant the same review as a new rider for its continued compliance with these requirements, which would be assessed based upon the facts presented in the record of the applicable future proceeding.[23]

43. The Commission also weighed several issues beyond the minimum statutory criteria argued by Public Service and QTS in this proceeding to be controlling in approving the EDR Settlement.[24] For example, the Commission considered differing discount rates for differing contract terms as a key program design feature; intended to dissuade an EDR customer from benefitting from early termination; and considered (but did not decide) what policy would be most appropriate and effective for this Commission to adopt as to geographically-differentiated EDR discounts.

44. At the conclusion of Proceeding No. 20A-0345E, Public Service filed the EDR Tariff in Proceeding No. 21AL-0350E on July 20, 2021. The proposed tariff sheets went into effect by operation of law, effective July 23, 2021. First Revised Sheet 82 states: "[a]ll other EDR Customer Service Agreements, including those meeting the requirements for Standard EDR Contracts that would cause the Company to serve load in excess of the enrollment cap applicable to Standard EDR Contracts, are subject to Commission approval." Notably, §40-3-104.3(6)(b)(II)(B), C.R.S., contemplates and requires separate approval of rates for the addition or expansion of existing load at a single location greater than 20MW, as opposed to provision via a Commission-approved tariff applicable to such addition or expansion of smaller loads.

[23] Decision No. C21-0333, at ¶57.
[24] Decision No. C21-0333.

II. ECONOMIC DEVELOPMENT RATE CUSTOMER SERVICE AGREEMENT

45. Public Service executed the EDR ESA with QTS on June 5, 2023. Public Service prepared the EDR ESA as a Non-Standard EDR contract in accordance with § 40-3-104.3, C.R.S., and as contemplated in Decision No. C21-0333 in Proceeding No. 20A-0345E. Where a particular customer does not meet the terms and eligibility for the standard contract, a customer specific Non-Standard EDR Contract may be negotiated, executed, and filed for approval with the Commission in connection with a number of further compliance items. Accordingly, Commission approval of the EDR ESA with QTS is necessary because the Non-Standard EDR contract accommodates significantly more than the maximum 20 MW of new load allowed for Standard EDR Agreements as well as to address variances from standard discounts under the EDR Tariff.

46. Public Service partnered with the Aurora Economic Development Council (EDC) to assess QTS as a potential EDR customer.[25]

47. Both the Colorado Office of Economic Development and International Trade and the City of Aurora support approval of the Application.[26]

48. In defending the EDR ESA and the associated Transmission Facilities Construction Service Agreement (TSA), Public Service argues that Staff and UCA raise unsupported concerns regarding financial securities and other customer protections, as well as regarding the Company's methods for assessing the customer and system benefits associated with QTS, all of which go beyond the scope of what is relevant for assessing the Company's Application in this proceeding.[27] Public Service further contends that Staff and UCA are changing course on positions that they had previously agreed to in the EDR Settlement.[28]

[25] Hr. Ex. 101, at 19, ll. 1-7.
[26] See Hr. Ex. 101, Attachment TLB-3 (Colorado Office of Economic Development and International Trade Letter of Support) and Attachment TLB-4 (City of Aurora Letter of Support).
[27] Hr. Ex. 105, at 13.
[28] Hr. Ex. 105, at 13, ll. 16-17.

49. As discussed in greater detail below, Public Service contends that EDR statutory requirements and the Commission's decision in Proceeding No. 20A-0345E control and the introduction of new contrary criteria should be rejected.[29] Public Service also contends that Staff's proposed eligibility requirements seem to be "designed to screen out as many potential EDR customers as possible."[30]

50. Public Service likewise rebuts Staff's argument that a higher threshold of economic benefits should be required to approve the Application.[31] In sum, the Company argues that neither the EDR statute, the EDR settlement, nor Decision No. C21-0333 provide any basis to support such a threshold or tie the discount rate a non-standard EDR customer may receive to some amount of projected economic benefits.[32]

51. In its rebuttal case, Public Service agreed to modify various calculations Staff and UCA address that would have the Company commit to covering any direct or indirect costs that result from the approval of the EDR ESA and TSA.[33] The Company acknowledges that it would be required to ensure no subsidization occurs: "To the extent Staff and UCA would have the Company commit to covering any direct or indirect costs that result from QTS's EDR, yes; this is a statutory requirement, in any case, and the Company would be required to ensure no subsidization occurs regardless of what the agreements say. However, many of the commitments requested by UCA are already provided for in the agreements themselves."[34]

52. Public Service also clarifies that provisions of the agreements already encompass requests made by Staff and UCA. Illustratively, no modification is needed to address one

[29] Hr. Ex. 105, at 16.
[30] Hr. Ex. 105, at 16, ll. 12-14.
[31] Hr. Ex. 105, at 28-29.
[32] Hr. Ex. 105, at 29.
[33] Hr. Ex. 105, at 36.
[34] Hr. Ex. 105, at 36-37.

advocated request because the TSA already requires QTS to pay 100 percent of the actual costs associated with the Transmission Facilities. Similarly, in response to questioning about QTS's "Stage One Payment," Public Service confirms that the scheduled payment was received.[35]

53. In response to the additional protections sought by UCA and Staff to ensure non-EDR customers never subsidize costs of EDR customers, Public Service states that the EDR ESA already provides that QTS would cover any "related costs" associated with a default, including legal fees, while the TSA includes a similar provision regarding coverage of remaining costs in the event the agreement is terminated prior to the QTS Transmission Facilities' in-service date.[36] The Company confirms that it will proceed accordingly by all lawful means to ensure other customers are held harmless as required by the EDR Statute.

A. Eligibility

1. Public Service's Position

54. Thomas L. Bailey, Senior Director, Corporate Economic Development, Xcel Energy Services Inc. (XES), testified on behalf of Public Service to summarize and support the proposed Non-Standard EDR for QTS. Mr. Bailey adopts Mr. Wishart's Direct Testimony as it relates to the EDR Settlement background and customer eligibility (Section II.A).

55. Mr. Bailey explains the Company conducted due diligence on QTS by evaluating the legitimacy of proposed new load through an extensive enrollment assessment, and by conducting a commercial credit report review.[37] Working with a prospective "EDR customer, the Company conducts due diligence with local economic development partner(s) and Company account managers, as appropriate, to assess the prospective EDR customer's economic health and

[35] Hr. Ex. 105, at 37; *see also* Hr. Ex. 300, Attachment FDS-1C (Public Service Response to Discovery Request CPUC2-18 and Confidential Attachments).
[36] Hr. Ex. 105, at 39.
[37] Hr. Ex. 101, at 17.

legitimacy. During due diligence, the Company requires a commercial credit report and assurance of financial security. The EDR customer is directed to provide an affidavit setting forth specific facts that confirm its statutory eligibility for the EDR discount."[38]

56. Under the terms of the EDR ESA between Public Service and QTS, QTS will take electric service from the Company for a minimum of ten years, subject to receiving a percentage discount off standard base rates under Schedule Transmission General. According to Public Service, QTS affirms that in seeking service under the EDR ESA, it is not relocating or transferring existing load from the Colorado service territory of another public utility.[39]

57. Although the EDR Settlement does not establish pricing of Non-Standard EDR Contracts, Public Service states that the EDR ESA with QTS has been informed by certain EDR Settlement provisions.[40] Other than the base rate discount structure of the EDR ESA, the rate structure and customer obligations generally parallel the EDR tariff.[41]

58. Likewise, the Company and QTS have agreed to apply the same riders here as those required for Standard EDR contracts under the EDR Settlement.[42] Under the ESR ESA, QTS will pay the GRSA and GRSA-E; the EDR ECA; the DSMCA; the RESA; the CEPA; the Transportation Electrification Programs Adjustment; and the Clean Energy Plan Rider, once it is in effect.

59. Comparable to the Standard EDR contract approved by the Commission in Proceeding No. 20A-0345E, if QTS stops taking electric service at any time prior to the EDR ESA expiration, then QTS would be required to repay the difference between discount levels applied

[38] Hr. Ex. 101, at 13, ll. 10-16.
[39] Hr. Ex. 101, at 27.
[40] Hr. Ex. 103, at 11.
[41] Hr. Ex. 103, at 13
[42] Hr. Ex. 103, at 27.

based on the original contract term and discount levels that would have been applied based on the actual contract term, with interest applied at the Company's cost of long-term debt in the event of termination prior to the contract term.[43]

60. The EDR ESA provides no discount from applicable tariff rates occur until: the agreement is approved by the Commission, necessary transmission facilities are placed into service, and QTS becomes a Transmission General (TG) customer with at least 20 MW of load at the Aurora QTS Campus. Should the development never provide a minimum of 20 MW of new load, Mr. Wright acknowledged that there will be no EDR discount under the terms of the EDR ESA.[44] As such, the EDR ESA effectively guarantees the minimum load must be met before any EDR rate goes into effect.

61. QTS is required to provide Public Service with forecasts (quarterly and upon Company request) of its quarterly expected peak load and load factor spanning the next 10 years and to immediately notify the Company of any material departures from previously provided estimates.[45]

62. Public Service commits not to contract for coal resources specifically to serve QTS's qualifying EDR load. In addition, coal-fired generation will not be accepted in Phase II of the 2021 ERP & CEP.[46]

63. Public Service points out that QTS has successfully developed numerous data center campuses throughout the country, has a strong and experienced executive and leadership

[43] Hr. Ex. 101, at 28.
[44] Tr. 111623, at 151.
[45] Hr. Ex. 103, at 33.
[46] Hr. Ex. 103, at 32.

team, and has an established history of community and economic engagement where it has developed its business.[47]

64. Mr. Bailey contends that QTS exercised sound business judgment while pursuing Commission approval of the EDR ESA and that his testimony along with QTS's actions demonstrate that all statutory criteria have been met.

65. Mr. Bailey further opines that QTS's needs will be met and the surrounding community, and all of Colorado, will benefit from approval of the Application. Having demonstrated that the EDR ESA meets the criteria of § 40-3-104.3, C.R.S., the Company contends that the agreement should be approved without modification. Further, the public interest is supported by approval in light of the resulting economic benefits to the public at large. Public Service also contends the EDR ESA supports the spirit of the EDR Settlement providing system benefits because QTS has a favorable expected load factor compared to the average load factor for the TG rate class.[48]

2. QTS' Position

66. Travis Wright is the Vice President of Energy and Sustainability for Quality Technology Services, LLC (Quality Tech), a subsidiary of QTS Realty Trust LLC.[49] Mr. Wright testified that the EDR ESA, from a customer perspective, is consistent with requirements the Commission approved in the EDR Settlement. He attests to QTS's EDR eligibility and why reliable, cost-effective electricity supply will be critical to the facility's success. He also addresses projected benefits of the selected site and explains that access to cost-effective, reliable infrastructure is the driving force behind the industry in which QTS operates.[50]

[47] Hr. Ex. 101, at 19,11-15.
[48] Hr. Ex. 103, at 34-36.
[49] Hr. Ex. 102, at 4.
[50] *Id*., at 13.

67. According to Mr. Wright, QTS inquired as to the availability of the EDR, and Public Service committed to filing the within Application, before construction began at the Aurora QTS Campus. Mr. Wright characterized the EDR rate offered by Public Service and the other terms of the EDR ESA as critical factors leading to the site selection and construction at the Aurora QTS Campus.[51] At 40 percent of operational costs, the cost of electricity is the single most important operational cost for QTS.[52] Mr. Wright characterized the EDR as "crucial."[53]

68. The planned Aurora QTS Campus will consist of four individual data center buildings on an approximately 80-acre site, with an average estimated total load of approximately 160 MW at full capacity (ramped into over a period of five to 10 years).[54]

69. Tenant clients in the buildings will contract with QTS for capacity within the campus as the buildings are energized between 2024 and 2033. As space is leased, equipment is installed. A variety of factors affect whether and when additional construction would take place, including denial of the within application.[55]

70. QTS expects to spend more than $1 billion on the Aurora QTS Campus, and Mr. Wright opines that their customers will spend double that amount every three years on servers and storage arrays that go inside the building, without considering any additional iterative benefits.[56]

[51] Hr. Ex. 102, at 8 and Tr. 111623, at 151.
52 Hr. Ex. 102, p. 13, ll. 15-16; Hr. Ex. 108, p. 9, ll. 13-14.
53 Hr. Ex. 108, at 9.
[54] Hr. Ex. 101, at 14-15; Hr. Ex. 102 at 10.
[55] 149-150.
[56] Hr. Ex. 108, p. 12, ll. 15-17.

71. QTS Realty Trust, LLC is QTS's parent company.[57] QTS Realty Trust, Inc. was formed in 2013 and QTS Realty Trust, LLC, is its successor by merger during mid-2021.[58] Blackstone Group acquired QTS Realty Trust, Inc. in August 2021.[59]

72. Mr. Wright is on the Quality Tech Site Selection Team, where he negotiates new-site infrastructure agreements and tax incentives.[60] He explained the process utilized to select the Aurora site for the Aurora QTS Campus.[61]

73. Quality Tech has never developed or operated a data center in Colorado.[62]

74. Mr. Wright acknowledged that QTS took a risk that the Commission could deny approval of the EDR ESA by purchasing the land and beginning construction of the shell of the first building, including provisioning of utilities, so it would be ready for equipment installation.[63] He opined the assumption of risk was reasonable considering the complexity of the project, clear language of the EDR Statute, and the existing Standard EDR program.[64]

75. In response to the cases put forward by Staff and UCA, QTS contends that the conditions they seek to the Commission's approval of the EDR ESA amount to a collateral attack against Decision No. C21-0333 in Proceeding No. 20A-0345E prohibited by § 40-6-112(2), C.R.S. Further, QTS argues that those conditions are contrary to Rule 1408 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, to allow parties to upend settlements, and would encourage parties to not reach settlements in Commission proceedings.

[57] Hr. Ex. 101, at 17, ll. 14; 5, 10-14.
[58] Hr. Ex. 101, at 18, ll. 1-3.
[59] Hr. Ex. 300, at 27.
[60] He is also responsible for government relations. Hr. Ex. 102, at 5.
[61] Hr. Ex. 102, at 10-11.
[62] Hr. Ex. 102, at 7.
[63] Tr. 111623, at 97-98 and 143.
[64] Hr. Ex. 108, at 8, ll. 10-19.

3. Opposing Intervenor Positions

a. UCA's Position

76. The UCA does not oppose QTS' qualification for an EDR rate and that the Aurora QTS Campus Project qualifies for the EDR tariff. However, UCA argues that data center companies as a whole are "not a good fit for what the legislature intended with the EDR statute" because they do not provide enough employment opportunities in Colorado.[65]

77. Along these lines, UCA contends that, because QTS is locating within the Denver metro area, which the UCA also states is at "full employment," and because QTS will only employ "a small number of jobs," the state of Colorado could get "a much bigger bang for its economic development dollars" by selecting other companies who will provide more employment in high unemployment areas.[66]

78. UCA also asserts that the 400 to 600 temporary construction jobs associated with the QTS facility should not be considered new construction jobs for Colorado, because the project will only take workers away from other, less-subsidized projects which provide better economic development for the state.[67] For these reasons, the UCA believes the EDR discount rate provided to QTS should be reduced.[68]

b. Staff's Position

79. Staff witness Ms. Fiona Sigalla challenges QTS's EDR eligibility by disputing the showing that the cost of electricity is a "critical consideration."[69] Staff initially admits that the cost of electricity was likely a critical consideration of QTS's location decision.[70] However, Staff

[65] Hr. Ex. 200, at 22, ll. 15-17.
[66] Hr. Ex. 200, at 22, ll. 17-22-23, ll. 1-2.
[67] Hr. Ex. 200, at 20, ll. 11-16.
[68] Hr. Ex. 200, at 18, ll. 9-11.
[69] Hr. Ex. 300, at 26, ll. 3-12.
[70] Hr. Ex. 300, at 26.

contends that Public Service failed to show that the availability of the EDR was a substantial factor because QTS purchased and began advertising the project prior to EDR approval.[71] Staff contends the EDR benefits are not "vital" to the project because QTS has already started advertising for its Aurora QTS Campus.[72] Staff also cites Mr. Wright's admission that building will occur even if the EDR ESA is not approved, but acknowledges that QTS made investments assuming that the EDR ESA would be approved.[73]

80. More generally, Staff argues that meeting statutory criteria alone should not be sufficient to prevail. Rather, "[f]rom Staff's perspective, the question is whether the project provides sufficient economic development benefits that deserve favorable rate treatment."[74] For example, Staff opines that there are insufficient economic development benefits to warrant approval,[75] and that the proposed site location is not economically disadvantaged.[76] Staff also argues that, while there will be economic stimulus associated with the discussed construction, there will not be "significant economic development benefits associated with the facility on an ongoing basis."[77] Ms. Sigalla thus challenges the need to offer QTS the negotiated discount arguing that Colorado is attractive for data centers and has attracted data centers without providing a discounted EDR.[78]

81. Staff also contends that the Application should be denied in light of the 130 MW cap the Commission imposed for the standard EDR program to allow review of the Company's entire EDR program.

[71] Hr. Ex. 300, at 26, ll. 16-19.
[72] Hr. Ex. 300, at 30.
[73] Hr. Ex. 108, at 14, ll. 5–15.
[74] Hr. Ex. 300, at 29.
[75] Hr. Ex. 300, at 29.
[76] Hr. Ex. 300, at 31; 7, ll. 6-7.
[77] Hr. Ex. 300, at 7, ll. 4-9.
[78] Hr. Ex. 300, at 23, ll.17-24, ll.9.

82. In Answer Testimony, Staff witness Mr. William Dalton questioned whether QTS will be a master meter operator (MMO) customer of Public Service.[79] Mr. Bailey resolved that uncertainty during hearing. QTS will be an MMO customer of Public Service.[80]

83. Staff effectively challenges that a MMO customer of Public Service should not be eligible to qualify as an EDR customer, for example, because it is a master meter operator customer of Public Service rather than an end-use customer.[81] QTS' qualifying load will be as a master meter operator for prospective tenants and QTS alone would have only a *de minimis* load.[82] Because tenants are not required to independently demonstrate eligibility for an EDR, Staff contends the load should not benefit from the EDR. Illustratively, Staff points out that prospective QTS tenants could be existing Public Service customers prior to becoming a tenant of QTS.[83] Staff further argues that QTS might profit from the EDR as a master meter operator by leveraging the competitive advantage resulting from the EDR contract to charge tenants higher costs (e.g. charging higher rent to partially offset EDR benefits).[84]

4. Public Service's Rebuttal

84. Public Service contends that neither the EDR statute, EDR Settlement, or the Commission Decision in the previous EDR proceeding establish requirements for how "substantial" or "significant" economic benefits associated with an EDR must be.[85] They also point out that Non-Standard EDR Customers load is not capped and any revenue QTS brought in must always be at least as high as the marginal cost to serve it, so QTS could not really be

[79] Hr. Ex. 301, at 17.
[80] Tr. 11-16-2023, at 30, ll. 5-8; Tr. 11-16-2023, at 85, ll. 21-23.
[81] Hr. Ex. 300, at 20.
[82] Hr. Ex. 300, at 25; Hr. Ex. 300, at 32.
[83] Hr. Ex. 300, at 32-34.
[84] Hr. Ex. 300, at 36.
[85] Hr. Ex. 105, at 29, ll. 3-7.

considered as taking potential funding away from other potential EDR projects.[86] Public Service also points to letters of support attached to Mr. Bailey's Direct Testimony, which state that both Aurora and the State of Colorado support Aurora QTS Campus and the economic benefits it will bring.[87] Finally, Public Service argues that as long as they demonstrate that QTS will pay at a minimum the marginal cost to serve it – and it's rate meets all other applicable requirements – there is no basis for a reduction in the discount rate offered to QTS.[88]

85. Similarly, Mr. Wright contends that the non-standard EDR requirements do not require showing that the cost of electricity is "more critical" than other factors or require the Commission weigh all of the different considerations that go into a decision to locate in Colorado.[89] He contends that QTS has satisfied both the requirement that the cost of electricity was a critical consideration and the availability of economic development rates were "a substantial factor" in the decision of where to locate their facility.[90]

86. Regarding Staff's arguments related to QTS being an MMO under the EDR ESA, Public Service disputes Staff's questions as to QTS' role and relationship. Mr. Bailey contends the Commission has authority over QTS's EDR and Public Service's provision of electric service to QTS – not over QTS's day-to-day decisions or operations of its property.[91] The Company has contracted with QTS, and QTS alone. QTS will be the customer of Public Service. The Company will meter and bill QTS as an MMO. There is only one master meter for an MMO and one bill. All load at the Aurora QTS Campus would be billed at QTS's meter, and that load exceeds the 3 MW threshold.[92]

[86] Hr. Ex. 105, at 29, ll. 19-21-30, ll. 1-2.
[87] Hr. Ex. 105, at 30, ll. 4-6.
[88] Hr. Ex. 105, at 29, ll. 9-12.
[89] Hr. Ex. 108, at 10, ll. 9-12.
[90] Hr. Ex. 108, at 10, ll. 12-15.
[91] Hr. Ex. 105, at 25.
[92] Hr. Ex. 105, at 25.

87. QTS's tenants to whom power is delivered via the master meter are not customers of Public Service. The MMO must "not charge the end users, as part of its billing for utility service, for any costs in addition to the actual cost billed to the MMO by the serving utility."[93] The MMO "shall not resell electricity provided by the serving utility for profit."[94] Public Service disputes there is any basis upon which to conclude those tenants are customers of Public Service.[95]

88. Mr. Bailey contends that it is not reasonable to expect that no preparations would take place prior to full Commission EDR approval. He notes that speed to market is often of critical importance for EDR customers, and speed to market was discussed at length by Public Service in Proceeding No. 20A-0345E.[96] He disagrees with Mr. Sigalla that taking such preparations prior to Commission EDR approval means that EDR was not a substantial consideration in a customer's location decision.[97]

89. Mr. Wright maintains that the EDR was a critical consideration in QTS's decision to locate in Colorado, since electricity will be their single largest expense.[98] The 10-year discount from the EDR ESA amounts to significant savings for QTS and their customers, and it will help QTS be competitive in attracting customers.[99] Mr. Wright notes that QTS might have located their facility in other states, had it not been for Colorado's EDR statute.[100]

B. Discount From Tariff Rates, But Not Lower Than Marginal Cost

90. Under the EDR ESA, QTS has committed to taking electric service from the Company for a minimum of ten years subject to a percentage discount off standard base rates under

[93] § 40-1-103.5(1), C.R.S.
[94] Rules 3802-3803, 4 CCR 723-3.
[95] Hr. Ex. 105, at 19-20.
[96] Hr. Ex. 105, at 17, ll. 11-13.
[97] Hr. Ex. 105, at 17, ll. 16-19.
[98] Hr. Ex. 108, at 9, ll. 11-14.
[99] Hr. Ex. 108, at 9, ll. 14-16.
[100] Hr. Ex. 108, at 9, ll. 17-19.

Schedule Transmission General (Schedule TG). The EDR ESA also provides for QTS to pay specific rate riders, which are also reflected, and periodically adjusted, in the Company's electric tariff. Notably, QTS will pay the quarterly EDR ECA, a volumetric charge set forth in Public Service's tariffs designed to capture the full extent of the marginal costs of the energy required to serve an EDR customer consistent with EDR Settlement provisions relating to Standard EDR contracts. QTS will also pay the General Rate Schedule Adjustments, the Demand-Side Management Cost Adjustment, the Renewable Energy Standard Adjustment, the Colorado Energy Plan Adjustment, the Transportation Electrification Programs Adjustment, and the Clean Energy Plan Rider, once it is in effect. In contrast, the Company proposes that QTS would not pay the Transmission Cost Adjustment (TCA) or the Purchased Capacity Cost Adjustment (PCCA). Public Service contends that the riders that QTS would pay or would not pay pursuant to the EDR ESA align with the terms of EDR Settlement and are reasonable.[101] In other words, Public Service did not see a compelling reason to treat QTS different than standard EDR contracts in terms of the riders.[102]

1. Public Service's Position

91. Mr. Jason A. Rurup is a Pricing Consultant in the Rates & Regulatory Affairs department of Public Service. Mr. Rurup adopts the Direct Testimony of Mr. Steven W. Wishart as it pertains to pricing, marginal cost calculations, power supply/system benefits, ratemaking issues, and emissions impacts (Sections II.B-II.D, III, IV.A, and VI of Mr. Wishart's Direct Testimony and associated recommendations).[103]

[101] Hr. Ex. 103, at 27.
[102] Hr. Ex. 103, at 27, ll. 12-16.
[103] *See*, Hr. Ex. 105, at 7.

92. Public Service states that the EDR ESA, along with the terms of the TSA, will ensure the revenues received from QTS will exceed the marginal cost to serve QTS throughout the duration of the contract.[104]

93. Public Service advocates that the method for calculating marginal costs for EDR customers reviewed and approved by the Commission in Proceeding No. 20A-0345E applies to both Standard and Non-Standard EDR Customers. The Company's marginal cost calculations as relevant to the EDR ESA with QTS thus applies the methodology set forth in the EDR Settlement. Table SWW-D-1 summarizes the marginal cost definitions applied by the Company in its analysis presented in its direct case.[105] Table SWW-D-2 provides the calculated estimate of QTS marginal cost of generation capacity.[106] Public Service's projected expected load projection over the 10-year period of the EDR ESA is contained in Table SWW-D-3.[107] In Confidential Attachment SWW-1C, the Company projected revenues to be received from QTS over the 10-year term of the contract.[108]

94. The Company explains that the calculated marginal cost of energy reflects the expenses associated with serving one additional megawatt hour of load. With respect to EDR customers, this would be the cost of fuel, purchased power, and variable operations and maintenance (O&M) expenses needed to serve the increased load.[109] However, rather than requesting that the Commission approve a specific marginal cost of energy for its consideration of the EDR ESA with QTS, the Company requests approval to charge QTS the quarterly EDR ECA Factor, as approved for Standard EDR contracts in Proceeding No. 20A-0345E, as being

[104] Hr. Ex. 103, at 13-14.
[105] Hr. Ex. 103, at 17.
[106] Hr. Ex. 103, at 17, 20.
[107] Hr. Ex. 103, at 28.
[108] Confidential Attachment SWW-1C to Hr. Ex. 103 and Hr. Ex. 103, at 28-29.
[109] Hr. Ex. 103, at 21.

reasonable and consistent with § 40-3-104.3, C.R.S. Public Service contends that is it reasonable to apply the EDR ECA Factor to all standard and non-standard EDR contracts because it is a volumetric charge designed to capture the full extent of the marginal costs of the energy required to serve an EDR customer.

95. The EDR ECA Factor charges EDR customers Electric Commodity Adjustment (ECA) charges based on the marginal costs of the energy they consumed.[110] Since the EDR ECA is equal to the marginal energy cost to serve QTS through a true-up mechanism, marginal energy costs have no impact on the determination whether the revenue received from QTS exceeds the marginal cost to serve them.[111]

96. In addition to addressing the marginal energy costs associated with the EDR ESA, Public Service estimated the marginal cost of corporate services for QTS as it affects the total revenue and total energy sales. The Company contends that it is reasonable to apply the same methodology to determine estimated marginal cost of corporate services based upon allocation factors approved in the use the approved revenue requirement from the Company's most recent Phase I electric rate case, Proceeding No. 21AL-0317. According to Public Service, this approach also aligns with the Company's pending Phase II case, Proceeding No. 23AL-0243E.[112]

97. Marginal franchise fees or an occupation tax will be included in the total bill for QTS.[113]

98. Public Service argues that the Commission has already determined in Proceeding No. 20A-0345E those rate riders that all EDR customers would pay. Consistent with Schedule EDR customers with Standard EDR contracts, Public Service proposes charging QTS the

[110] Hr. Ex. 103, at 22.
[111] Hr. Ex. 106, at 13-14.
[112] Hr. Ex. 103, at 24-25.
[113] Hr. Ex. 103, at 25.

DSMCA, including both the Demand Side Management (DSM) costs that are typically recovered through the DSMCA rider and the portion of the DSM costs that are embedded in base rates. The DSMCA charge for EDR customers is based on the full DSM revenue requirement rather than solely the DSMCA rider.[114]

2. Positions of Opposing Intervenors

a. UCA's Position

99. UCA witness Chris Neill concludes that Public Service's calculation of the marginal capacity cost and its proposal to charge QTS the EDR ECA fail to demonstrate the EDR discount will exceed marginal cost to provide service.[115] Hence, UCA concludes that Public Service failed to meet its burden of proof as to the marginal cost requirement in § 40-3-104.3(6)(b)(I), C.R.S. UCA argues the Company did not use the best data and that the forecast data is speculative, untrustworthy, and confusing.

100. UCA contends that Public Service failed to demonstrate the reasonableness of EDR ECA estimates relied upon and questions how the off-peak EDR ECA can be significantly less than the cost of Public Service's coal-fired generation reported in the 2022 FERC Form 1. Mr. Neill also states that the EDR ECA values differ from the ECA for conventional commercial or industrial customers.[116] He contends the EDR ECA depends solely on Public Service's calculation of the marginal costs of the energy they consume, for which there is no transparency.[117]

101. To appropriately charge QTS the marginal cost of energy and capacity, UCA contends that costs should be updated to reflect more recent available data from actual projects that bid into Public Service's recent competitive solicitation the Company implemented as part of

[114] Hr. Ex. 103, at 25-26.
[115] Hr. Ex. 201, at 20.
[116] Hr. Ex. 201, at 15.
[117] Hr. Ex. 201, at 16.

its ongoing Electric Resource Plan (ERP) in Proceeding No. 21A-0141E. Mr. Neill contends that the 120-Day Report analyzing the results of that bid solicitation shows costs that are substantially higher than Public Service's estimate presented in the Company's Direct Testimony. According to UCA, marginal energy costs should include the cost of additional renewable capacity as well as firm capacity.[118] Accordingly, Mr. Neill contends that use of a combustion turbine may not accurately reflect the marginal cost of capacity for QTS.[119]

102. UCA also argues that Public Service cannot take on a customer the potential size of QTS without creating additional overhead expenses.[120]

103. Mr. Neill further contends that Public Service failed to reasonably calculate future QTS EDR revenues under the EDR ESA.[121] UCA states that the assumed Schedule TG escalation at two percent is not reasonable and is not reflective of the estimations made in other proceedings. Rather than assuming approximately 1.9 percent per year, revenues should be projected based upon an actual forecast of rate increases (*e.g.*, rate increases associated with the Colorado Power Pathway transmission line[122] as well as rate increases associated with the additions of new capacity and the early retirement and accelerated recovery of coal plants[123]).

104. UCA concludes that the contract discount negotiated by the parties should be reduced to a more reasonable level for all 10 years of the EDR ESA, after consideration of all other incentives QTS will receive.[124] UCA argues that economies of scale justify a lesser discount.[125] For instance, because QTS is eight times as large as the minimum for a non-standard EDR

[118] Hr. Ex. 201, at 19.
[119] Hr. Ex. 201, at 19.
[120] Hr. Ex. 200, at 23.
[121] Hr. Ex. 201, at 24.
[122] Proceeding No. 21A-0096E.
[123] Proceeding No. 21A-0141E.
[124] Hr. Ex. 200, at 21.
[125] Hr. Ex. 200, at 23.

customer, 53 times larger than the minimum size for a standard EDR customer, and will have a planned peak demand of 160 MW, subsidies for QTS as negotiated will be greater than all other EDR subsidies in Colorado, combined.[126] UCA contends a "more reasonable 15% EDR discount rate for the first five years and a 10% EDR discount rate for the remaining five years" should be adopted.[127]

105. With respect to riders, Mr. Neill contends that QTS should be required to pay the TCA because the power must be delivered through the transmission system to the customer. He recommends the Commission revisit the issue addressed as to Standard EDR contracts in Proceeding No. 20A-0345E in light of the Colorado Power Pathway project approved in Proceeding No. 21A-0096E.[128]

106. Finally, UCA contends that a condition of approval should require using the EDR ECA to capture any additional costs that QTS should pay. Illustratively, UCA witness Leslie Henry-Sermos points to the legal and regulatory expenses incurred in this proceeding.[129]

b. Staff's Position

107. Staff contends that Public Service has failed to demonstrate how the EDR ESA satisfies statutory requirements and that QTS will cause higher fixed and variable system costs that will require higher base rates and other rider costs for other customers.[130]

108. For instance, Mr. Dalton disputes the reasonableness of Public Service's contention that charging the quarterly EDR ECA Factor per a Standard EDR contract is reasonable and consistent with statute.[131] Staff contends that the marginal energy cost to serve QTS can never be

[126] Hr. Ex. 200, at 23, ll. 12-16.
[127] Hr. Ex. 200, at 23.
[128] Hr. Ex. 201, at 22.
[129] Hr. Ex. 202, at 15, ll. 18-20.
[130] Hr. Ex. 300, at 21.
[131] Hr. Ex. 301, at 8.

zero because there are always costs attributable to ongoing fixed costs, overhead, resource integration, system balancing, resource dispatching, and frequency regulation regardless of instantaneous marginal energy costs.[132]

109. Mr. Dalton argues that Public Service's approach to pricing based on marginal costs ignores the increased fixed costs, including higher overhead costs, to serve QTS, such as capital costs resulting from required network upgrades and from resource acquisitions far removed from QTS's location in Aurora.[133] According to Staff, omitting these increased costs results in general ratepayer subsidization for QTS's offered rate.[134] He also views the risk of increased cost burden on disproportionately impacted/income-qualified (DI/IQ) communities.[135] Mr. Dalton cites to Public Service discovery responses stating that electric generation will need to be delivered to QTS's site, which will likely reduce the available capacity on the transmission system, as evidence to his claims.[136]

110. Mr. Dalton also criticizes Public Service's omission of resource acquisition to serve the 160 MW incremental load because it will be acquired through ongoing and planned ERP proceedings. Along these lines, he criticizes Public Service's contention based upon updates to load and resources information filed with the Commission that QTS's 160 MW incremental load can be accommodated and acquired through ongoing and planned ERP proceedings.[137] Despite the filing of the 120-day Report in Proceeding No. 21A-0141E, Mr. Dalton contends that ERP bids selected and awarded cannot be assumed to result in commercial operation.[138] Thus, Mr. Dalton concludes that Public Service's approach to calculating the marginal cost to service QTS fails to

[132] Hr. Ex. 301, at 8.
[133] Hr. Ex. 301, at 9, ll. 15-18.
[134] Hr. Ex. 301, at 9, ll. 18-19.
[135] Hr. Ex. 301, at 9-10.
[136] Hr. Ex. 301, Attachment WJD-1.
[137] Hr. Ex. 300, at 15.
[138] Hr. Ex. 301, at 14.

capture the entire energy cost to serve a new 160 MW load for a single retail customer over a 10-year horizon.[139] Instead, according to Staff, serving QTS's load creates additional resource acquisition pressure and urgency.[140]

111. Staff goes on to argue that, with QTS's expected high load factor and high energy demand, QTS's load may or may not benefit Public Service's system depending upon whether it will absorb excess renewable energy generation or other generation, including carbon-emitting natural gas generation, could be dispatched to serve this load. Mr. Dalton warns that bulk system upgrades might be needed to deliver renewable energy from various renewable energy rich resource regions to serve QTS.[141]

112. Staff further contends that the magnitude of additional capacity could result in unintended costs to ratepayers, both from potentially stranded assets and environmental costs.[142] For example, Ms. Sigalla states that the EDR ESA for QTS will not cover the costs of unexpected factors.[143] She agrees that QTS is making a sizeable investment at the Aurora QTS Campus, but states that it "is not uncommon" for companies to relocate, especially if economic incentives expire, which leaves the system with needed upgrades that could be costly.[144]

113. Turning to the riders QTS will pay under the EDR ESA, Staff recommends that QTS be subject to all ten of the rate riders applicable to Schedule TG customers.[145] Staff specifically identifies the TCA that provides concurrent recovery of new transmission investment costs in between rate cases and the PCCA that recovers the cost to purchase electric generation capacity from other suppliers.

[139] Hr. Ex. 301, at 10.
[140] Hr. Ex. 301, at 14.
[141] Hr. Ex. 301, at 10-11.
[142] Hr. Ex. 300, at 40.
[143] Hr. Ex. 300, at 40, ll. 5-7.
[144] Hr. Ex. 300, at 40, ll. 11-13.
[145] Hr. Ex. 302, at 4, 5.

114. Staff witness Erin O'Neill points out that the revenue requirement for the recently approved Colorado Power Pathway project will begin to be recovered in the TCA before the costs are transferred into base rates at some future rate case.[146] She explains that Public Service is building this and other transmission infrastructure in order to deliver power planned as part of the ERP in Proceeding No. 21A-0141E, and opines that a load the magnitude of QTS should contribute to TCA recovery for that infrastructure.

115. Staff has also changed its position regarding EDR customers and the PCCA that recovers the cost to purchase electric generation capacity from other suppliers since Proceeding No. 20A-0345E. Staff no longer views capacity contract costs in the PCCA as embedded system costs, as they are not associated with infrastructure Public Service builds to serve the system generally.[147] Staff argues that customers like QTS often drive new or incremental demand on the system and the PCCA recovers market contract costs incurred to ensure enough capacity to serve the peak hour. Staff concludes that since QTS will be adding to the Company's market purchases needed to reliably supply peak capacity, it is appropriate for QTS to pay the PCCA.[148]

3. Public Service's Rebuttal

116. In its Rebuttal Testimony, Public Service contends it is reasonable to calculate marginal costs as the Company has advocated to meet statutory requirements in this Proceeding. Public Service adheres to using the approach in the EDR Settlement but adjusts several marginal cost calculation inputs and assumptions in its modeling: (1) base rates from the Company's most recent Phase I Electric Rate Case (Proceeding No. 22AL-0530E), which became effective September 8, 2023; (2) the annual rate escalation factor of 2.25 percent, reflecting the

[146] Hr. Ex. 302, at 7.
[147] Hr. Ex. 302, at 10, ll. 8-10.
[148] Hr. Ex. 302, at 10, ll. 6-13; 9, ll. 2-11.

120-Day Report filed on September 18, 2023 in Proceeding, No. 21A-0141E; (3) updated O&M data, (4) QTS's maximum anticipated load of 252 MW, and (5) updated capacity cost assumptions based on the bids presented in the 120-Day Report.[149]

117. In response to Staff, Mr. Wright argues that Mr. Dalton's concerns should be allayed by the state's robust ERP process and that the duration of the EDR is 10 years, after which QTS will revert to the standard TG customer tariff.[150] He further contends that pressure and concerns about Public Service's ability to meet native load will exist regardless of whether QTS is on an EDR rate or the regular Schedule TG tariff rate.[151]

118. Mr. S. Parker Wrozek, Senior Manager of Engineering, XES, also disputes Mr. Dalton's positions on network upgrades and characterizes them as being "meritless and factually incorrect" and based on insinuations rather than engineering.[152] "[T]he Company affirmatively determined that no network upgrades will be needed to serve the Aurora QTS Campus."[153] According to Public Service, the marginal cost of transmission required to serve QTS is approximately $28.1 million, which reflects the costs required to construct the QTS Transmission Facilities that will interconnect the QTS load with Public Service's transmission system.[154]

119. Mr. Wrozek also criticizes Mr. Dalton's contention that costs other than marginal costs are incurred and argues that Mr. Dalton's logic "neglects the benefit that providing service to QTS will have on other customers' use of the transmission system."[155] Mr. Wrozek asserts that adding QTS to the transmission system will increase the amount of energy delivered across

[149] Hr. Ex. 105, at 7-8; Hr. Ex. 106, at 28-32. Hrg. Tr., 11-16-23, at 161, ll.11-14, 166, ll.17-168, ll.15.
[150] Hr. Ex. 108, at 15, ll. 17-21.
[151] Hr. Ex. 108, at 15, ll. 20-22.
[152] Hr. Ex. 107, at 11, ll. 4-23-12, ll. 1-19.
[153] Hr. Ex. 107, at 11, ll. 13-15; *see, id*. Attachment SPW-6C (transmission capacity study).
[154] Hr. Ex. 103, at 21.
[155] Hr. Ex. 107, at 12, ll. 13-15.

Public Service's transmission system without increasing the system's fixed costs, which will lower the per-unit cost of the transmission system for all Public Service electric customers.[156]

120. Mr. Rurup likewise criticizes Mr. Dalton's analysis of marginal costs addressing costs where he includes energy costs that are not marginal costs. He explains that the fixed cost of corporate overhead and cost of generation resource acquisitions are included in other parts of Public Service's QTS Forecasted Cost of Service analysis, provided as Hearing Exhibit 106, Attachment JAR-3C.[157]

121. Mr. Rurup also argues that the EDR ECA process, as reflected in Sheet Nos. 82F and 143F of the Company's Electric Tariff, ensures that EDR customers—both Standard and Non-Standard — pay actual marginal energy costs, because that process includes a quarterly forecasted cost, applies a true-up mechanism based on actual marginal costs, and captures the cost of large loads such as the requirements of QTS. He contends this methodology complies with the EDR Settlement and is based on the EDR statutory requirement that the EDR customer pays above the marginal costs.[158] Mr. Rurup confirms that the proposed methodology to calculate QTS's marginal costs (and the EDR ECA as applied to QTS) is consistent with the Commission-approved EDR Settlement in Proceeding No. 20A-0345E. In terms of transmission, Public Service was able to specifically study the locational impacts of QTS's load on the network and identified a specific transmission interconnection project that QTS has agreed to pay up front.[159] Therefore, Mr. Rurup points out that no basis has been shown to depart from this methodology.[160] Economically, he

[156] Hr. Ex. 107, at 12, ll. 15-19.
[157] Hr. Ex. 106, at 14, ll. 14-17.
[158] Hr. Ex. 106, at 11-12.
[159] Hr. Ex. 106, at 13, ll. 1-3.
[160] Hr. Ex. 106, at 13, ll. 3-5.

contends the approach is meritorious because it ensures a net benefit will be equitably shared across all customer classes because revenues will exceed the marginal cost of service.[161]

122. Public Service concludes that QTS will pay tens of millions of dollars more than the cost to serve it over the ten-year life of the EDR ESA.[162] Because the calculated revenues to be collected under the EDR ESA and TSA exceed all the calculated marginal costs required to serve QTS, the Company contends that the statutory condition is met.[163]

C. Transmission Facilities Construction Service Agreement

1. Public Service's Position

123. Public Service executed the TSA with QTS on June 5, 2023. Mr. Travis Wright testified that the TSA, from a customer perspective, is consistent with requirements the Commission approved in the EDR Settlement.

124. The TSA provides for Public Service to construct, own, and operate related transmission facilities that will connect the QTS Transmission Facilities. The Company plans to construct approximately 1.4 miles of double circuit 230 kV transmission line, from the midpoint of an existing 230 kV line which currently terminates at the Spruce and Chambers substations, and a new 230 kV switching station located adjacent to QTS's substation.[164]

125. In developing the TSA, Public Service ultimately conducted a detailed Transmission Interconnection Study to identify the facilities needed as well as evaluate potential project alternatives, consistent with a letter agreement entered into by Public Service and QTS.[165] In 2020, the Company began studies for QTS's project based upon an Engineering & Planning

[161] Hr. Ex. 106, at 13.
[162] *See,* Hearing Exhibit 106, Attachments JAR-2C and JAR-3C.
[163] *See,* Attachment SWW-2C to Hearing Exhibit 103 and Hearing Exhibit 103, at 30-31.
[164] Hr. Ex. 101, at 30.
[165] Hr. Ex. 101, at 29-30; Hr. Ex. 104, at 14.

(E&P) Agreement with QTS and a corresponding $50,000 payment by QTS. Based upon the results thereof, a Supplemental Letter was added to the E&P Agreement to collect a pre-payment of $525,000 for a Routing Study that was completed in 2022. The selected route was identified for an extended 230 kV transmission line to follow and interconnect to the substation on QTS's project site.[166]

126. Construction of the QTS Transmission Facilities is planned to begin in mid-2024, with an anticipated in-service date of December 15, 2024. The facilities are necessary to serve the Aurora QTS Campus.[167]

127. The TSA provides that QTS will pay Public Service for the total cost of those transmission facilities.[168] Only QTS will be responsible for the costs to construct the QTS Transmission Facility.

128. If QTS stops taking electric service at any time after the EDR ESA expires and Public Service determines that the transmission facilities are no longer needed to serve other customers, then QTS will be obligated to pay all costs and expenses incurred by the Company in decommissioning and otherwise removing the facilities.[169]

2. UCA's Position

129. Because QTS will have paid for the QTS Transmission Facilities, Mr. Neill contends that those facilities should not be part of rate base and should not be a charged to non-EDR customers.[170]

[166] Hr. Ex. 101, at 16-17, and Hr. Ex. 104, at 20-22.
[167] Hr. Ex. 101, at 36, 39.
[168] *See,* Attachment TLB-2 to Hearing Exhibit 101.
[169] Hr. Ex. 103, at 15.
[170] Hr. Ex. 201, at 10.

130. The UCA likewise contends that all direct expenses associated with assets dedicated to the EDR customer and funded by the EDR customer should not be included in any revenue requirement for rate base for ratemaking purposes. UCA advocates that the Commission condition approval upon explicitly prohibiting inclusion of any costs associated with assets dedicated to and funded by the EDR customer in any future revenue requirement.[171]

131. UCA witness Ron Fernandez illustratively points to depreciation, operations and maintenance, and property taxes as examples of direct costs associated with such assets.[172] Mr. Fernandez argues that these assets are not used to serve other ratepayers, who derive no benefit from the assets, so non-EDR ratepayers should not be required to pay any costs associated with the assets.[173] Therefore, the UCA argues that the Commission order "an explicit prohibition" of including any such costs in any future revenue requirement.[174] Without such a prohibition, the UCA contends that Public Service will be able to "double dip and engage in excessive cost recovery," which the UCA believes is contrary to the public interest.[175] The UCA does, however, agree that revenue Public Service receives from QTS will be treated as a revenue credit to the revenue requirement,[176]

132. Ms. Henry-Sermos further notes that the inclusion of O&M expenses related to transmission as part of the marginal cost of service only extend for the term of the 10-year agreement; however, the need for O&M will continue. Additionally, she argues that if Public Service suspends or terminates the agreement with QTS because they have not received full

[171] Hr. Ex. 200, at 17.
[172] Hr. Ex. 200, at 16.
[173] Hr. Ex. 200, at 16, ll. 20 - 17, ll. 1-2.
[174] Hr. Ex. 200, at 17, ll. 5-7.
[175] Hr. Ex. 200, at 17, ll. 7-8.
[176] Hr. Ex. 200, at 17, ll. 8-10.

payment for all remaining costs, there will be unpaid construction-related costs and unnecessary and stranded facilities.[177]

133. UCA thus argues that any decision approving the EDR ESA and TSA should be conditioned upon prohibiting any recovery from Public Service's non-EDR customers for stranded infrastructure costs or for other costs such as O&M costs in the event of default.

3. Public Service's Rebuttal

134. Mr. Bailey states that the EDR ESA already provides for QTS to cover any "related costs" associated with a default and that the TSA includes a similar provision regarding coverage of remaining costs should the agreement be terminated prior to the QTS Transmission Facilities' in-service date.[178] He also contends that there are no generation facilities being built specifically for service to QTS, so there is no risk of other stranded assets. Should any additional costs arise in connection with the EDR ESA or TSA that were not covered by QTS, Public Service would "proceed accordingly by all lawful means to ensure other customers are held harmless."[179]

D. Service and Facilities Charge

135. Staff points out that while QTS can assert no resale of electricity for profit per MMO rules, Public Service Tariff Sheet Number 70 – Schedule TG (stating the Service and Facility Charge, per service meter) would not apply to customers of a MMO.[180] Mr. Dalton characterizes this as a hidden subsidy leading to an unfair advantage.[181] Staff recommends that QTS be required to pay the equivalent service and facility charge that each tenant would have otherwise incurred if

[177] Hr. Ex. 202, at 15, ll. 6-9.
[178] Hr. Ex. 105, at 39, ll. 6-9.
[179] Hr. Ex. 105, at 39, ll. 12-15.
[180] Hr. Ex. 301, at 19.
[181] *Id*.

not for locating on QTS Aurora site and that Public Service provide the calculations and determination of such fees.[182]

136. Mr. Bailey, however, calls this recommendation "baseless."[183] He argues that all MMOs pay a single Service and Facility Charge, as they are a single customer under the applicable MMO Statute and Rules, and that accepting this recommendation from Staff would require Public Service to discriminate against QTS compared to the other MMOs to whom Public Service provides services.[184] Mr. Bailey also points out that the legislature does not require the additional payments that Staff recommends, and Staff did not previously raise issues with MMOs being EDR customers in the previous EDR proceeding, 20A-0345E.[185]

137. Public Service witness Mr. Wright further points out that it is not clear what the basis for a fluctuating service and facility fee based on the number of customers would be; these charges are typically designed to cover Public Service's costs of reading customer meters, and QTS will have only one meter to read.[186] He also notes that the arrangements between QTS and its customers are not regulated by the Commission, so it is similarly unclear what the basis for charges to those tenants would be.[187]

138. Finally, the Company concludes that QTS will pay for its full marginal customer costs, without discount, thus ensuring those costs are fully recovered. The resulting monthly Service and Facility Charge, $13,746 per month, will be revisited in each Phase II electric rate case that occurs for the duration of the EDR ESA.

[182] Hr. Ex. 301, at 19-20.
[183] Hr. Ex. 105, at 27, ll. 7.
[184] Hr. Ex. 105, at 27, ll. 7-12.
[185] Hr. Ex. 105, at 27, ll. 9-10; 27, ll. 17-18.
[186] Hr. Ex. 108, at 19, ll. 19-21; 20, ll. 2-4.
[187] Hr. Ex. 108, at 19, ll. 16-18.

E. Emissions Condition

139. Public Service examined potential system impacts and benefits before entering the EDR ESA.[188] The Company concludes that serving the additional load from QTS will not impair achieving emissions reduction goals or meeting the State's emissions reduction requirements.[189]

140. Staff points to the possibility of increased natural gas steam generation resources being deployed to serve QTS and the corresponding possibility of increased greenhouse gas emissions.

141. Although the EDR Statute is silent as to emission limits, Staff advocates for the same restrictions that were agreed to in the settlement partially resolving Proceeding No. 20A-0345E. The Company acknowledges that compliance with standards will be more difficult. Staff advocates that it is reasonable to impose the conditions to ensure that conflicting policies are reconciled and that the EDR ESA will not result in incremental greenhouse gasses.

F. Security Fund

1. Public Service's Position

142. Based upon the due diligence conducted and financial security requirements, Public Service opines that QTS will be able to meet its obligations to the Company.[190]

143. Mr. Rurup summarizes how the EDR ESA and TSA provide multiple protections to ensure that Public Service would be able to recoup any contractual default, including the ability to draw on financial security.[191] QTS is required to fund and maintain financial security (i.e. the security fund) in the amount of $1,061,000.[192]

[188] Hr. Ex. 103, at 35.
[189] Hr. Ex. 103, at 33.
[190] Hr. Ex. 101, at 21.
[191] Hr. Ex. 103, at 16.
[192] Hr. Ex. 101, 20.

144. According to Public Service, QTS will have a significant investment in the Aurora QTS Campus and transmission facilities before it ever receives benefit of the EDR ESA.[193] QTS has already paid Public Service $525,000 for the Company to perform engineering and design work for the construction of transmission facilities.[194] QTS will have paid to construct the Transmission Facilities needed to serve its campus before receiving the benefit of any discount. Costs are currently estimated at approximately $28.1 million (including the amounts QTS has already paid).[195]

145. In addition to drawing on the security fund, Public Service also retains the right to disconnect service or pursue legal avenues to enforce contractual rights.[196]

146. In the event Public Service cannot recover all contractually required payments from QTS, Public Service advocates that any bad debt associated with the QTS contract not be included in base rates charged to non-EDR customers. Rather, such amounts would be allocated solely to EDR customers through the EDR ECA.[197]

147. Mr. Bailey contends that the security provisions were negotiated based upon sound business judgment and experience and that arbitrary, speculative, and vague calls for "more" should be rejected.[198] Because non-EDR participants will bear no financial risk associated with the security provisions, Mr. Bailey believes Public Service should maintain discretion in determining how that risk should be managed.[199]

148. Public Service concludes that the evidence shows customers are protected from cross-subsidization.

[193] Hr. Ex. 101, at 21.
[194] Hr. Ex. 101, at 20.
[195] Hr. Ex. 101, at 20-21.
[196] Hr. Ex. 101, at 28.
[197] Hr. Ex. 103, at 16-17.
[198] Hr. Ex. 105, at 33-35.
[199] Hr. Ex. 105, at 35, ll. 18-20.

2. Opposing Intervenors

a. UCA's Position

149. UCA contends that the security fund inadequately protected non-EDR customers. But, because of the lack of financial information provided in its Direct Testimony, UCA concludes that intervenors cannot ascertain the financial riskiness of QTS or its parent company. Rather, a sufficient EDR ESA security fund amount should be tied to the annual incremental revenue amounts that the EDR ESA is estimated to produce in the years from 2025 through 2035.[200] UCA advocates a condition requiring QTS to provide a security fund of at least $18 million by way of a letter of credit or an escrow account to protect non-EDR customers. Further, UCA advocates a "substantially increased" required fund amount.

150. The UCA contends that any legal or other Public Service costs associated with a default/bankruptcy should similarly be segregated and removed from any future revenue requirement and Public Service's non-EDR customers should not have to cross-subsidize or pay any of the costs.[201] Accordingly, Public Service should be prohibited from assigning, allocating, or trying to recover any direct or indirect costs that result from the default/bankruptcy of an EDR customer from its non-EDR ratepayers.[202]

151. Finally, UCA contends the Commission should condition approval upon prohibiting Public Service from assigning, allocating, or trying to recover any direct or indirect costs that result from the default/bankruptcy of an EDR customer from its non-EDR ratepayers.[203]

[200] Hr. Ex. 200, at 10 - 13; *see also* Hr. Ex. 103, at 31, Table SWW-D-6.
[201] Hr. Ex. 200, at 14.
[202] Hr. Ex. 200, at 15.
[203] Hr. Ex. 200, at 15.

b. Staff's Position

152. Staff agrees that recovery of bad debt through the EDR ECA is consistent with the EDR Settlement. However, Staff raises a concern that flowing potentially large bad debt costs to other EDR customers could undermine goals of the EDR Statute.[204]

153. Similar to UCA, Staff effectively urges the Commission to condition any approval upon requiring Public Service to assume all associated risk and any costs of an EDR rate.

3. Public Service's Rebuttal

154. Public Service concludes that the financial security and other assurances contained in the agreements sufficiently protect it from the types of risks raised. The Company should determine the appropriate level of risk so long as it is shown that non-EDR participants will bear no financial risk associated with the agreements.[205] Mr. Bailey opines that no valid justification has been shown for imposing such terms on an otherwise qualifying EDR customer.[206] Further, he contends that the treatment proposed is in accordance with the EDR Settlement.[207]

155. More generally, Mr. Bailey again contends that Staff and UCA failed to show that the terms of the EDR ESA and TSA do not sufficiently protect non-EDR customers from subsidizing QTS. He argues that the terms already address some concerns raised by Staff and UCA. For example, QTS has already agreed to pay the cost of transmission facilities, including any overruns, in full.[208] The Company is and has committed through the EDR ESA and TSA that non-EDR customers will bear no financial risk associated with the EDR.

[204] Hr. Ex. 300, at 44.
[205] Hr. Ex. 105, at 35.
[206] Hr. Ex. 105, at 36.
[207] Hr. Ex. 105, at 40.
[208] Hr. Ex. 105, at 36.

G. Assumption of Risk

156. Staff contends that Public Service should be required to assume all risk and costs associated with the project and notes that, in Proceeding No. 20A-0345E, the Company "agreed to accept the risk of stranded assets attributable to EDR customers and not to seek recovery of these costs in future rate cases."[209] Costs should never be recoverable from general ratepayers, including decommissioning costs, vegetation management, wildfire mitigation, and liability.[210]

157. Public Service points out that the Company covering any direct or indirect costs that result from QTS's EDR is a statutory requirement, and the Company is required to ensure no subsidization by non-EDR customers occurs, regardless of what agreements say.[211]

H. Rate Case Demonstrations

158. Climax does not oppose the EDR ESA between Public Service and QTS, but advocates that the Commission impose a condition that Public Service include a demonstration in Phase I and II rate case filings during the 10-year term, that no other customers will subsidize Public Service's service to QTS or experience any rate increases because of QTS's discounted rates. Climax argues that Public Service's revenue projections exceed it costs projections, which is the basis for Public Service's contention that other customers will not subsidize the service to QTS or experience rate increases. However, Climax argues that because the Company's revenue and marginal cost calculations are based upon projections as developed in this Proceeding, one cannot be assured that, in fact, no cross subsidization occurs over the term of the agreement.

159. Climax goes on to argue that the statutory protections require proof in fact, rather than only projections to seek approval of the application. Public Service's assurances that there

[209] Decision No. C21-0333, at ¶66; Hr. Ex. 300, at 42.
[210] Hr. Ex. 300, at 43.
[211] Hr. Ex. 105, at 36, ll. 21-23 - 37, ll. 1.

will be no cross-subsidization can only be proven with actual calculations of revenues from QTS and costs to serve it, so Public Service should be required to present such proof in every rate case during the term of the QTS contract.

160. Likewise, UCA contends that Public Service should be required to show QTS revenues, costs, and benefits based upon forecasts of all proceedings, such as ERP costs, renewable energy requirements, transmission costs, coal retirement costs, Pawnee gas conversion costs, etc.

161. Staff similarly argues that Public Service should be required to provide methodology to determine actual costs using actual energy costs, network costs, and base rates on an annual basis.[212]

162. In response, Public Service argues that approval of the EDR ESA is subject to approval at a point in time compared to "the utility's tariffs in effect at the time."[213]

I. Deferred Accounting of Case Expenses

163. Mr. Bailey adopts Mr. Wishart's Direct Testimony as it relates to Company's request for deferred accounting treatment of case expenses (Section IV.B).

164. Public Service requests to track and defer case expenses associated with preparing and litigating this filing into a regulatory asset without interest for future recovery through the EDR ECA, as is consistent with the EDR Settlement.[214] (Under the EDR Settlement, Standard EDR contract costs and revenues are not treated separately from other customer costs and revenues in ratemaking proceedings, as the rate structure adequately ensures that EDR revenues from customers exceed corresponding marginal costs.[215]). Because revenues from serving QTS will exceed the marginal costs to serve, the proposed treatment would benefit

[212] Hr. Ex. 301, at 6, ll. 3-5.
[213] *See,* § 40-3-104.3(6)(b)(I), C.R.S.
[214] Hr. Ex. 103, at 37.
[215] Hr. Ex. 103, at 37, ll. 11-15

non-EDR customers because revenue would partially offset the revenue requirement that would otherwise be recovered from non-EDR customers through base rates.[216] Public Service contends this proposal is reasonable and consistent with the provision for Standard EDR contracts on the EDR Settlement.[217] Recording these costs in a separate account will ensure that EDR customers pay all marginal costs to serve them and that EDRs do not result in any rate increases for non-EDR customers.[218]

165. UCA supports allowing Public Service to defer its actual and documented EDR legal and regulatory expenses into a deferred regulatory account for potential recovery through the EDR ECA in a future proceeding, as long as there is a specific provision in the Commission Decision that no direct or indirect EDR legal or regulatory costs can be allocated to or recovered from Public Service's non-EDR customers.[219]

166. Staff acknowledges that the Commission approved the EDR Settlement that provides for costs prudently incurred to prepare and litigate the application and compliance advice letter(s) be allocated to EDR customers through the EDR ECA Factor in a future cost recovery filing.[220] However, Staff advocates that any requested recovery should be denied because the Application should be denied as it is not "suitable." Staff contends that the potential cost impact of failed applications could burden legitimate EDR customers.[221]

167. In response, Mr. Bailey contends that Staff's position is contrary to the EDR Statute as well as the Legislature's express declaration of the public interest. The Company instead supports the UCA's recommendations regarding the treatment of case expenses, including

[216] Hr. Ex. 103, at 38.
[217] Hr. Ex. 103, at 41.
[218] Hr. Ex. 103, at 41-42.
[219] Hr. Ex. 200, at 9.
[220] Hr. Ex. 300, at 46.
[221] Hr. Ex. 300, at 48.

the proposed Commission findings. Public Service concludes that this approach ensures no improper cross-subsidization of EDR costs will occur pending the Commission's review of actual expenses in a future proceeding, consistent with the EDR statute and the EDR Settlement.[222]

J. Findings and Conclusions

168. The Commission applied the EDR Statute in Proceeding No. 20A-0345E by approving Public Service's tariff-based economic development rates for additions and expansions of load at a single location less than or equal to 20MW and by delineating "Standard" and "Non-Standard" EDR Contracts.[223] The Legislature expressly required separate approval of applications addressing loads in excess of 20 MW and directs the burden of proof to the utility in the proceeding. Notably, the Legislature put no cap on the size of EDR load and the statutory criteria for approval do not differ based upon the size of load.

169. In part, the Commission-approved EDR Settlement resolved many differences between the parties as raised in that previous proceeding. After expressing interest and acknowledging applicability of broad constitutional and statutory authority to regulate public utilities, the Commission declined in Decision C21-0333 to require that Public Service target the EDR program geographically. That decision was further implemented through a compliance filing in Proceeding No. 21AL-0350E on July 20, 2021. The Commission found no ambiguity in the EDR Statute and no party argues ambiguity herein.

170. In Decision C21-0333, the Commission also found it necessary to impose three conditions upon EDR approval. First, the clawback provision must provide interest at the Company's cost of long-term debt. This condition is satisfied here because the EDR ESA provides for such interest.

[222] Hr. Ex. 105, at 46.
[223] Decision No. C21-0333.

171. The Commission cannot tie the hands of a future Commission in the ongoing obligation to monitor the treatment and applicability of riders designed to recover Company investment between rate cases. As the Commission previously noted, a review of a material change to an existing rider or adoption of a new rider could be required to ensure continued compliance with statutory requirements. Such a review would be assessed based upon the facts presented in the record of the applicable future proceeding. The Commission's ongoing obligation being identical as to Standard and Non-Standard EDR Customers, the second condition will be imposed to ensure that the Commission can comply and meet ongoing requirements of existing law.

172. Finally, the Company was required to report additional information regarding the total jobs associated with EDR customers in the appropriate Annual EDR Report, and to identify the number of jobs within Enterprise Zones and Opportunity Zones. To ensure availability of information sought by the Commission to understand the impact of the EDR program, approval will be conditioned upon reporting requirements for this Non-Standard EDR Customer here.

173. As discussed below, Staff and UCA advocate several additional conditions to ensure that non-EDR customers do not subsidize the cost of providing services to EDR customers. In effect, these conditions would reduce the discount negotiated between Public Service and QTS, providing additional protections for non-EDR customers against cross subsidization. Consistent with the EDR Statute, however, the undersigned declines to impose additional conditions upon the negotiated agreement to provide additional protection unless they are found necessary to ensure that non-EDR customers do not subsidize the cost of providing services to EDR customers, or to comply with another statute, rule, or decision. To do otherwise, would be contrary to the EDR Statute.

1. Eligibility

174. QTS evaluated benefits during the process of site selection and demonstrated that access to cost-effective, reliable infrastructure is the driving force behind the industry in which it operates. Accordingly, QTS inquired as to the availability of the EDR, and Public Service committed to filing the within Application before construction began at the Aurora QTS Campus. The evidence shows that the low EDR rate provided by Public Service and the term of the EDR agreement were critical factors leading to the site selection and construction at the Aurora QTS Campus. The uncontroverted evidence shows that the cost of electricity will be 40 percent of the operating cost of the facility and the site selection process undertaken corroborates how critical the cost of electricity was to QTS' selection of the Aurora QTS Campus.

175. QTS will invest more than a billion dollars to create the Aurora QTS Campus without regard tenant investments and potential for ancillary development. Commercial or industrial operations will be conducted by QTS as an MMO customer of Public Service. QTS does not currently conduct operations in Colorado and is not a customer relocating or otherwise transferring an existing load of at least three megawatts from the Colorado service territory of another public utility into Public Service's service territory.

176. In accordance with the EDR statute, no EDR discount will be in effect until such time as QTS has added at least 20 MW megawatts of new load at that single location, and the term of the EDR ESA does not exceed 10 years.

177. Under the TSA, QTS will pay all actual transmission costs required to serve the Aurora QTS Campus, and the vast majority of costs, if not all, will be paid in advance.

178. Staff challenges QTS' eligibility for EDR because activities continued beyond site selection prior to Commission approval of the EDR ESA. It is found that QTS' approach was reasonable and practical in light of the size and complexity of the project, the plain statutory

criteria, the support and agreement of Public Service, and QTS' assumption of risk. Proceeding without prior Commission approval does not negate previously having met the statutory requirements.

179. Staff also raises concerns as to whether the intent of the Legislature enacting the EDR statute can be met by MMO customers.

180. Staff and UCA present arguments based upon rules of statutory construction advocating that the negotiated EDR ESA should be rejected for reasons not expressed in the EDR statute or that conditions upon approval be imposed (addressed below). Illustratively, it is argued that there are not sufficient benefits under the EDR ESA to warrant approval, that the agreement does not promote growth in economically depressed areas, and that it does not encourage geographic diversity in its application.

181. The undersigned disagrees with the legal foundation for arguments based upon the Legislative Declaration as a false foundation. Application of any statute begins with the plain language. Where no ambiguity is shown, there is no need to resort to rules of statutory construction and courts generally do not resort to legislative declarations to apply statutes. Advocacy that approval should be denied based upon elements other than those necessary to comply with any statute, rule, or decision will not be adopted.

182. While acknowledging and not interpreting the intent of the Legislative Declaration, each of Staff and UCA's arguments that the statute enacted failed to best align with the declaration will be decided based upon the clear and unambiguous language of the EDR statute.

183. The plain language of the EDR statute provides that non-EDR customers benefit from "Standard" and "Non-Standard" EDR Contracts so long as Public Service complies with the statutes, rules, and decisions of the Commission, so long as non-EDR customers are protected from

cross-subsidization, and so long as EDR revenues exceed the marginal cost to serve. It is further notable that the EDR statute does not cap the amount of load eligible for EDR rates.

184. Public Service has shown that the cost of electricity was a critical consideration in QTS' decision where to locate new or expand existing operations; and the availability of economic development rates, either on their own or in combination with other economic development incentives, was a substantial factor in QTS' decision to locate new or expand existing business operations in Colorado.

185. Based upon the plain reference to a qualifying commercial or industrial customer, QTS is found to be an eligible customer to apply for an EDR as an MMO customer of Public Service.

2. Discount From Tariff Rates, But Not Lower Than Marginal Cost

186. The undersigned finds the evidence compelling that the Commission previously approved in Proceeding No. 20A-0345E Public Service's methodology for comparing a proposed EDR for an eligible customer to the marginal costs to service to that customer in order to conclude that the burden of proof under the EDR statute was met. In this Proceeding, Public Service applied the same methodology for Standard EDR Customers (capped at 130 MW) to calculate the marginal cost to serve QTS as a Non-Standard EDR Customer.

187. The fact that separate approval is required for the EDR ESA alone does not alter the criteria required for approval. It has been shown to be reasonable and appropriate that marginal cost calculations be based upon the approved methodology.

188. Public Service's calculations of marginal cost and EDR revenues were critiqued in Answer Testimony. In its rebuttal case, the Company incorporated several modifications to the

calculations. Based thereupon, Public Service has demonstrated that the EDR discount for QTS will cause EDR revenues to exceed all marginal costs.

189. Criticism remains by Staff and UCA as to specific elements of the calculation of cost to serve; however, the opposing intervenors failed to show that advocated modifications, if adopted, would overcome Public Service's showing that the QTS revenues will exceed the marginal costs calculated consistently with the approved methodology.

190. Questions were raised as to potential increased fixed costs not captured in Public Service's marginal cost calculations. Those questions were either rebutted or no showing was made to specify or quantify the impact of advocated modifications upon Public Service's comparison of revenues and the marginal cost of serving QTS. Illustratively, Staff advocates that other bulk system costs are not captured. Even if such amounts were shown and they are greater than zero, as advocated, Staff did not provide sufficient evidence to specify or quantify their impact in relation to statutory elements that must be proven herein.

191. The undersigned further agrees that it is reasonable to apply the EDR ECA Factor to QTS. It is a volumetric charge, which includes a true-up mechanism, to capture the full extent of the marginal costs of the energy required to serve QTS. This will ensure compliance with statutory prohibitions against cross subsidization.

192. It is also noteworthy that, in approving the EDR ECA Factor, the Commission specifically noted the quarterly true-up process based on the Company's actual marginal cost data as determined by a retroactive supply curve model and the potential for future modifications through a quarterly ECA operations meeting.

193. Opposing intervenors contend that the negotiated discount should be reduced to be more reasonable, to take advantage of economies of scale or other competitive advantages, and

access should be limited to additional discounts. While understanding the intervenors' arguments, they have failed to point to any statute, Commission rule, or precedent indicating that the availability of other discounts or advantages prevents a non-standard EDR customer from receiving the specific negotiated discount offered here, or that such discounts or advantages prevent a customer from receiving a discounted EDR at all. It has also not been shown that adopting these conditions is necessary to comply with any statute, rule, or decision, or necessary to prevent prohibited cross-subsidization.

194. In Proceeding 20A-0345E, the Commission acknowledged that EDR discounts may be in the form of a base rate discount and the non-applicability of certain rate riders. The Company and QTS have agreed to apply the same riders here as those required for Standard EDR contracts under the EDR Settlement. Exclusion of the TCA and PCCA was negotiated by Public Service and QTS, resulting in the incorporated discount in the EDR ESA.

195. Much advocacy occurred as to those riders that QTS should be required to pay. Staff candidly admits their view of appropriate riders to apply has changed since Proceeding No. 20A-0345E was decided. It is now Staff's opinion that QTS should be required to pay the TCA and PCCA, particularly because of the size of the load and because projects in the TCA are being developed to deliver new renewable generation to system loads. UCA advocates requiring QTS to pay the TCA.

196. Understanding the advocacy and that Staff has changed its view on requiring EDR customers to pay the TSA rider, it still has not been shown that Public Service failed to meet the burden of proof based upon the discount negotiated, that the TCA or PCCA must be paid as a necessary condition pursuant to § 40-3-104(6)(c)(1), C.R.S., or that another condition is necessary

to comply with any other decision, rule, or statute. It has similarly not been shown that payment of the TSA or PCCA riders are necessary to protect customers from cross-subsidization.

3. Transmission Facilities Construction Service Agreement

197. Public Service reasonably negotiated the TSA to provide the transmission facilities necessary to serve the Aurora QTS Campus and for QTS to pay all costs thereof. By requiring the vast majority of payments in advance, and supported by other due diligence, the terms of the TSA reasonably demonstrate that non-EDR customers will not subsidize the costs to serve QTS. Public Service will construct, own, and operate the transmission facilities paid for by QTS.

198. UCA advocates that a condition should be imposed requiring exclusion of QTS Transmission Facilities from rate base. Because the assets will be owned by the Company, consideration for inclusion in rate base is appropriate. However, because QTS will pay for the cost of the facilities and QTS's payments will be credited against the cost of the facilities, inclusion of the zero-cost asset in rate base will have no rate impact to other customers.

199. It has not been shown that adopting the advocated condition is necessary to comply with any statute, rule, or decision, nor that the condition will prevent cross-subsidization by non-EDR customers.

4. Service and Facility Charge

200. It is argued that the service and facilities charge for QTS should differ as an MMO from other MMOs and that the service and facilities charge be calculated and determined as if QTS were not locating at the Aurora QTS Campus.

201. The same arguments could be applied to any MMO customer. In any event, no basis has been shown to justify such discrimination. The evidence also fails to show sufficient

basis to impose such a condition upon approval of the EDR ESA as it has not been shown necessary to comply with any statute, rule, or decision.

5. Emissions Condition

202. Public Service has determined that serving the additional load from QTS will not impair achieving emissions reduction goals or meeting the State's emissions reduction requirements. Staff contends there is a possibility that the EDR could increase greenhouse gas emissions. However, additional pressure in this regard was not shown to affect whether the statutory elements for approval would not be met or that the condition is necessary to comply with any statute, rule, or decision.

203. Public Service agreed not to contract for coal resources specifically to serve QTS's qualifying EDR load. This commitment will be adopted as a condition here because it is reasonable, unopposed, and furthers the public interest.

6. Security Fund

204. Staff and UCA raise concerns as the effect of a contractual default compounded by Public Service's inability to recoup the same. However, such concerns are speculative and contingent at this point.

205. In contrast, Public Service thoroughly and reasonably conducted due diligence in establishing a significant security fund to mitigate risks and incorporate protections in the EDR ESA and TSA to recoup consequences of contract default. Especially given Mr. Bailey's testimony that non-EDR participants will bear no financial risk associated with the agreements, non-EDR customers are adequately protected from cross-subsidization of the EDR customer.[224]

[224] *See* Hr. Ex. 105, at 35.

206. The Commission has an ongoing obligation to protect non-EDR customers from cross-subsidization. In the event the argued contingencies should occur, and if Public Service were to attempt recovery in an appropriate proceeding, such matters could be addressed and decided by the Commission in a future proceeding. It has not been shown that the Commission must impose the advocated condition at this time to ensure that the Commission can comply and meet ongoing requirements of existing law, and the security fund provides non-EDR customers with additional protection from cross-subsidization.

7. Assumption of Risk

207. In Rebuttal Testimony, Mr. Bailey testified that the Company is willing to commit to covering any direct or indirect costs that result from the EDR ESA with QTS. This commitment will be adopted as a condition because it is reasonable, unopposed, and acknowledges of the statutory requirements of the EDR statute.

208. The imposition of any additional condition requiring Public Service to assume all risk and costs is speculative and contingent. Mr. Bailey makes clear the Company has committed through the EDR ESA and TSA that non-EDR customers will bear no financial risk associated with the EDR.[225] Additionally, if the argued contingencies should occur, and if Public Service were to attempt recovery in an appropriate proceeding, such matters could be addressed and decided by the Commission in a future proceeding.

8. Future Demonstrations

209. The Legislature placed the burden on Public Service in this proceeding to demonstrate that QTS revenues will exceed the marginal costs. It met that burden. Both Climax and UCA failed to show that it is necessary to impose a future burden as a condition of approval

[225] Hr. Ex. 105, at 36.

of the application here or that the condition is necessary to comply with any statute, rule, or Commission decision.

9. Deferred Accounting of Case Expenses

210. A condition is advocated that contingent unpaid additional costs should be required to be included in the EDR ECA Factor. Even if such amounts exist and are greater than zero, it has not been shown that adopting the advocated condition is necessary to comply with any statute, rule, or decision. Additionally, should Public Service incur and seek recovery of such amounts, the Commission would act in a future proceeding based upon the record therein.

III. CPCN FOR QTS TRANSMISSION FACILITIES

A. Public Service's Position and Alternative Request for CPCN

211. As explained in the Application, Public Service requests a finding that that no CPCN is required for the QTS Transmission Facilities. In the alternative and to the extent necessary, the Company requests the Commission grant the Company a CPCN to construct and to operate the QTS Transmission Facilities, finding that the QTS Transmission Facilities are reasonable and in the public interest.

212. Mr. Bailey adopts Mr. Wishart's Direct Testimony as it relates to the Company's request for a finding that no CPCN is needed for the QTS Transmission Facilities (Section V).

213. Rule 3206(b), 4 CCR 723-3, provides:

> CPCN requirements for new transmission facilities. New transmission facilities that require a CPCN pursuant to this paragraph are not in the ordinary course of business. However, any utility may request a CPCN for any new transmission facility that does not require a CPCN under this paragraph. All utilities and electric cooperative associations subject to paragraph (a) of this rule shall be required to file a CPCN application for all new transmission facilities that meet one of the following criteria:
>
> (I) Transmission facilities designed at 230 kV or above, even if initially operated at a lower voltage. However, a radial transmission line designed at

> 230 kV or above that serves a single retail customer and terminates at that customer's premises will not require a CPCN application.
>
> (II) Transmission facilities designed at 115 kV or 138 kV, if:
>
> (A) the facilities do not meet the noise and magnetic field thresholds in paragraphs (e) and (f) of this rule; or
>
> (B) the Commission determines that the facilities are not in the ordinary course of business.

214. Public Service initially advised the Commission of its plans to construct the QTS Transmission Facilities in its Amended Rule 3206 Report filed on July 15, 2022, in Proceeding No. 22M-0005E (2022 Rule 3206 Report).[226] By Decision No. C22-0438, the Commission required that a CPCN, or a formal determination that no CPCN is required, for the project to move forward.[227]

215. Mr. Wrozek supports the Company's alternative CPCN request from a transmission engineering and planning perspective. He explains the studies the Company undertook to determine the need for the Transmission Facilities proposed, as well as alternative projects considered. He provides an overview of the Company's proposed siting for the QTS Transmission Facilities and discusses the status of siting, land rights, and permitting for the project. He also provides technical information regarding the planned design and construction of the QTS Transmission Facilities, and he discusses the results of the noise and magnetic field studies conducted for the QTS Transmission Facilities. Finally, he provides information supporting the Company's cost estimates for the Transmission Facilities, which will be fully paid for by QTS.

216. Public Service proposed the scope and design for the QTS Transmission Facilities as being the best approach to serve QTS's transmission needs under the EDR ESA.[228] The facilities,

226 Hr. Ex. 104, at 18:12-15.

227 Decision No. C22-0438, issued August 2, 2022, at ¶ 12, Proceeding No. 22M-0005E. RRR denied by Decision No. C22-0544, issued September 14, 2022, at Ordering ¶ 1, Proceeding No. 22M-0005E.

228 Hr. Ex. 101, at 30.

as negotiated under the terms of the EDR ESA and TSA, are required to bring this beneficial campus to fruition. The Company contends that construction of the QTS Transmission Facilities is, therefore, in the public interest and should be approved.[229]

217. Under the TSA with Public Service, QTS will pay for all costs incurred by the Company with respect to the QTS Transmission Facilities. The Company maintains that where a transmission project is intended to serve a single, dedicated customer and is funded entirely by that customer, there is no basis for requiring a CPCN or finding of public need.

218. Public Service initially contends that no CPCN should be required because a CPCN is not required for transmission projects that are conducted in the ordinary course of business nor required for "a radial transmission line designed at 230 kW or above that serves a single retail customer and terminates at that customer's premise."[230]

219. The Company admits that the Commission previously found that the line in question for this proceeding is not a "radial" line, as it is a double circuit, but states that there are additional policy reasons to justify a formal finding that no CPCN is required.[231]

220. Public Service argues the purpose of a CPCN to determine the public convenience and necessity is simply not applicable to a transmission facility paid for solely by QTS and constructed only to serve QTS, rather than serving the public and paid for by general ratepayers. Consistent with the EDR statute, the QTS Transmission Facilities at issue will be funded by QTS, meaning that costs of the project will not be charged to any other customers. Additionally, the facilities would be constructed for the sole purpose of serving the Aurora QTS Campus; Public Service does not anticipate them being used by any other customer.[232]

[229] Hr. Ex. 101, at 38
[230] Hr. Ex. 103, at 44, ll. 8-12, *citing* Rules 3102(a) and 3206(b)(I), 4 CCR 723-3.
[231] Hr. Ex. 103, at 44, ll. 12-15.
[232] Hr. Ex. 103, at 44, ll. 20-21 - 45, ll. 1-4.

221. Public Service contends that "delay and complication" to litigate a CPCN are inconsistent with the legislative declarations preceding the EDR Statute.[233] Public Service believes that requiring a CPCN for customer-financed transmission facilities that qualify under the Rule 3206(b)(I) CPCN exemption would add complication, complexity, and costs to projects that Colorado has a stated policy interest in advancing.[234] These regulatory burdens and costs, Public Service argues, are factors that "cut against Colorado's competitiveness when seeking to attract large load(s) that qualify for the EDR program."[235]

222. Public Service points to Proceeding No. 14M-0061E, where the Commission determined no CPCN was required under the standard in Rule 3206, 4 CCR 723-3. However, this exception is not applicable here, as 14M-0061E involved a project with a radial transmission line.[236] Had the project in this proceeding met that requirement, no CPCN would have been required under the rule. The Company also references projects found to be in the ordinary course of business in Proceeding Nos 18M-0005E and 12D-227E.[237]

223. As necessary to implement the EDR Statute, Public Service contends that customer financing is an important practical feature of transmission facilities built and designed to serve a single customer. Public Service therefore requests the Commission improve administrative efficiency surrounding the EDR program by removing procedural hurdles to the design and implementation of EDR projects, which would have been already vetted during the EDR application process.[238] Beyond the EDR context, Public Service argues that customer-financed

[233] Hr. Ex. 103, at 45.
[234] Hr. Ex. 103, at 45, ll. 14-17.
[235] Hr. Ex. 103, at 45, ll. 17-19.
236 Decision No. C14-0732, issued July 1, 2014, at ¶ 12, in Proceeding No. 14M-0061E.
237 Decision No. C12-0556, issued May 25, 2012, at ¶ 14, Proceeding No. 12D-227E. Decision No. C18-0843, issued September 21, 2018, at ¶ 12 and ordering ¶ 5, Proceeding No. 18M-0005E. 103, at 46, ll. 10-14.
[238] Hr. Ex. 103, at 47, ll. 1-3.

projects in general are outside the scope of the CPCN process, as they do not pose the financial and structural risks that the CPCN process is meant to protect against.[239]

B. UCA's Position

224. UCA contends that the facilities in question cannot be considered construction in the ordinary course of business and thus, a CPCN should be required because: (1) the sheer size of the additional 160 MW load demand, the construction is not contemplated in Public Service's current ERP; (2) a line extension with a $28.1 million cost to provide service to one EDR customer (QTS) cannot be considered to be part of the Company's natural system growth; and (3) it is not otherwise contemplated in any of Public Service's current plans.[240] The UCA also agrees with Public Service that the line in this proceeding, is not a radial transmission line and therefore does not meet the exemption requirements of Rule 3206(b)(l), 4 CCR 723-3.[241]

225. UCA supports approval of the CPCN so long as the burden of proof is met by Public Service and the UCA's advocated consumer protection-related conditions are adopted.

C. Staff's Position

226. Staff supports a finding that construction of the transmission facilities to serve only QTS does not require a CPCN because the public does not require the facilities and general ratepayers should not be asked to pay for any future costs associated with the new lines.[242]

227. After providing some context and background, Staff witness Adam Gribb addressed the requirements of Rule 3206(f):

> Rule 3206(f) requires computer studies which show the potential level of noise expressed, indicates the prescribed noise levels for listed zoning designations, as well as describing how the applicant should develop the applicable noise threshold for zoning designations not listed. Additionally,

[239] Hr. Ex. 103, at 47, ll. 4-7.
[240] Hr. Ex. 202, at 17.
[241] Hr. Ex. 202, at 18.
[242] Hr. Ex. 300, at 21; Hr. Ex. 303, at 8.

> the noise level will not be subject to further review if the applicant proposes a noise threshold of 50 db(A) or below regardless of the use of the land.[243]

228. Mr. Gribb reviewed the Project Kestrel Magnetic Field and Audible Noise Study Final, dated April 7, 2023, (Noise and EMF Report), Hearing Exhibit 104, Attachment SPW-4.[244]

229. The Noise & EMF Report demonstrates that the proposed maximum noise level possible for this project is 37 dB(A).[245] The Noise & EMF Report demonstrates that the proposed maximum EMF possible for this project is 150 milliGauss.[246]

230. In Staff's opinion, the proposed levels of noise and EMF are reasonable pursuant to Rule 3206(e)(III).[247]

D. Public Service's Rebuttal

231. Consistent with the Application, Public Service again requests in its rebuttal case that the Commission issue a determination that no CPCN is required, or in the alternative grant a CPCN for the QTS Transmission facilities, whether or not the Company's request to approve the EDR is granted. Mr. Bailey states that the obligation remains to construct the transmission facilities that will be fully paid for by QTS and will not serve the general public, regardless of the outcome of the Application. Thus, no CPCN should be required. Public Service requests an "unconditional" finding that no CPCN is needed, regardless of whether the EDR is approved.[248]

232. As to the UCA's argument, Public Service contends the Company would face somewhat of an oxymoron to meet a burden of proof that the public convenience and necessity

[243] Rule 3206(f), 4 CCR 723-3.
[244] Hr. Ex. 303, at 12.
[245] Hr. Ex. 303, at 12-13 and Table 1 - Transmission Magnetic Field and Audible Noise Results Summary, Hearing Exhibit 104, Attachment SPW-4.
[246] Hr. Ex. 303, at 12-13 and Table 2 – Switching station Magnetic Results Summary, Hearing Exhibit 104, Attachment SPW-4
[247] Hr. Ex. 303, at 14, ll. 15.
[248] Hr. Ex. 105, at 42, ll. 15-17.

requires construction of transmission facilities which would not serve the public and would not be paid for by the public.

233. Mr. Bailey also notes that no party has challenged Public Service's compliance with applicable CPCN rules and statutes; therefore, if the Commission decides a CPCN is required, Public Service requests one be granted.

E. Findings and Conclusions

234. Public Service's contention that a CPCN for the QTS Transmission Facilities is not required pursuant to Rule 3206(b)(I), which states that CPCNs are not required for "a radial transmission line designed at 230 kW or above that serves a single retail customer and terminates at that customer's premises," fails on its face because, as admitted by Public Service and the UCA, the line in this proceeding is not a "radial" line, but rather a double circuit. Public Service's cited support for this exception, Proceeding No. 14M-0061E, similarly fails to apply to the case at hand, because that proceeding too involved a radial line. Public Service seems to put emphasis on the latter part of the exception, *i.e.*, that the line serves a single retail customer and terminates at the customer's premises, as the primary basis for the application of this exception. However, Rule 3206(b)(I) is clear that the line must be a radial transmission line; therefore, this exception does not apply to Public Service and the QTS Transmission Facilities.

235. Further, the proposed facilities do not meet an exception to requiring a CPCN under Commission rules. The QTS Transmission Facilities will be constructed, owned, and operated by Public Service and will not be constructed in absence of statutorily-conditioned approval of the non-standard agreement by the Commission. As argued by UCA, Public Service failed to demonstrate that construction of the proposed facilities are in the ordinary course of business and the circumstances of this proceeding support that conclusion.

236. Although the facilities are being built at the expense of QTS alone and only serving QTS pursuant to the TSA, Public Service will construct, own, and operate the facilities and the record fails to demonstrate that stakeholders (*e.g.*, adjacent property owners) will not be adversely affected thereby in absence of review in considering whether a CPCN should be granted.

237. For the foregoing reasons, the request to find no CPCN to be necessary will be denied.

238. No party presents evidence in opposition to granting a CPCN on grounds separate from advocacy as to the EDR ESA.

239. Public Service has demonstrated that the Company undertook studies to determine the need for the QTS Transmission Facilities proposed, as well as alternative projects considered. Public Service concluded that the scope and design for the QTS Transmission Facilities are the best approach to serve QTS's transmission needs under the EDR ESA.

240. The facilities will serve only QTS and QTS will pay for all costs incurred by the Company with respect to the QTS Transmission Facilities in accordance with the TSA. The evidence clearly demonstrates that the facilities must be built to serve QTS under the EDR ESA.

241. Public Service further requests a finding of reasonableness for the estimated noise levels and estimated magnetic field levels in compliance with Commission Electric Rule 3102(c) and (d), 4 CCR 723-3. No party has contested the Company's testimony in support of these findings.

242. Staff reviewed Mr. Wrozek's studies and supports a finding that the levels be deemed reasonable.

243. Mr. Wrozek testified regarding the Noise and EMF Report. The Noise & EMF Report demonstrates that the proposed maximum noise level possible for this project is 37 dB(A),

and also demonstrates that the proposed maximum EMF possible for this project is 150 milliGauss ("mG").

244. Rule 3206(e)(III) states that, "Proposed magnetic field levels of 150 mG and below are deemed reasonable by rule and need not be mitigated to a lower 2 level." Mr. Gribb opines that levels of both noise and EMF are reasonable.

245. Because the QTS Transmission Facilities will be paid for by QTS, a presumption of prudence is neither applicable nor sought.

246. It is found and concluded that the QTS Transmission Project is reasonable and in the public interest and that the projected levels of audible noise and magnetic fields associated with the QTS Transmission Facilities are within reasonable limits and require no further mitigation. Based thereupon, a CPCN will be granted.

IV. ORDER

A. The Commission Orders That:

1. The Application for Approval of a Non-Standard EDR Contract, and for Determination No CPCN is Needed for Customer-Funded Transmission Facilities, filed on June 23, 2023, by Public Service Company of Colorado (Public Service), is granted in part as conditioned and clarified by this Recommended Decision, consistent with the discussion above.

2. The Non-Standard Economic Development Rate Customer Service Agreement between Public Service and QTS Aurora Infrastructure, LLC is approved as conditioned and clarified by this Recommended Decision, consistent with the discussion above.

3. The request for a determination that no Certificate of Public Convenience and Necessity is needed for the facilities that will connect the Aurora QTS Campus to the Company's

transmission system (collectively the QTS Transmission Facilities) is denied, consistent with the discussion above.

4. The alternative request for a Certificate of Public Convenience and Necessity for the QTS Transmission Facilities is granted.

5. The expected magnetic field values and audible noise values from the QTS Transmission Facilities meet the conditions of the Rules 3206(e)(III) and 3206(f)(II) of the Rules Regulating Electric Utilities, 4 CCR 723-3, and are therefore considered reasonable and need not be mitigated, consistent with the discussion above.

6. Consistent with the discussion above, Public Service is authorized to track, record, and defer all costs incurred to prepare and process this Application in a non-interest bearing regulatory asset account for presentation for review and recovery in a future proceeding.

7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

8. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

9. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director