

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25A-0354E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO CONCERNING AN APPEAL OF A LOCAL GOVERNMENTAL LAND USE
DECISION ISSUED BY ELBERT COUNTY.

**INTERIM COMMISSION DECISION DEEMING
APPLICATION COMPLETE, SETTING MATTER
FOR HEARING *EN BANC*, ESTABLISHING PARTIES,
ADDRESSING MOTION FOR EXPEDITED TREATMENT,
EXTENDING DEADLINE FOR FINAL DECISION,
SCHEDULING PREHEARING CONFERENCE,
AND REQUIRING PARTIES TO CONFER ON
A PROCEDURAL SCHEDULE**

Issued Date: October 9, 2025

Adopted Date: October 1 & 8, 2025

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I. BY THE COMMISSION**A. Statement**

1. By this Decision, the Commission deems complete and sets for hearing before the Commission *en banc* the Verified Application for Appeal of Elbert County's Denial of Requisite Siting Permits ("Application") filed by Public Service Company of Colorado ("Public Service" or the "Company") on August 26, 2025. Through the Application, Public Service requests the Commission issue an order authorizing the Company to begin construction of Segment 5 of its Colorado Power Pathway Transmission Project ("Pathway Project")¹ along the proposed route for the project within Elbert County, Colorado ("County"). Public Service states the Application arises out of the County's denial of two land use applications that Public Service submitted to the County for approval of 48 miles of the Pathway Project located in the County.

2. The Commission joins the County as an indispensable party, acknowledges the interventions of right filed by Trial Staff of the Commission ("Staff") and the Colorado Energy Office ("CEO"), and grants the motions for permissive intervention of the Colorado Solar and Storage Association ("COSSA") and Bar E Ranch Land Holdings, LLC ("Bar E Ranch").

3. The Commission grants, in part, and denies, in part, the Motion for Expedited Treatment, Shortened Notice and Intervention Period, Commission Hearing *En Banc*, and an Expedited Decision ("Procedural Motion"), filed by Public Service on August 26, 2025, consistent with the discussion below.

4. The Commission extends the statutory deadline for a final decision in this Proceeding by 130 days, to June 15, 2026, per § 40-6-109.5(1), C.R.S.

¹ The Commission granted Public Service's application for a certificate of public convenience and necessity for the Pathway Project in Proceeding No. 21A-0096E by Decision No. C22-0270, issued June 2, 2022.

5. The Commission sets a prehearing conference for October 22, 2025, from 1:00 p.m. to 2:00 p.m., and requires Public Service to confer with the established parties and file a proposed procedural schedule no later than October 17, 2025.

B. Procedural History and Background

6. On August 26, 2025, Public Service initiated this matter by filing the Application with written testimony and exhibits. The Application appeals the County's denial of two land use applications to the Commission, under § 29-20-108(5), C.R.S.

7. On September 2, 2025, the County filed a motion to intervene as of right, pursuant to Rule 3705(c) of the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* ("CCR") 723-3.

8. On September 2, 2025, the County filed a response to the Procedural Motion urging the Commission to afford the County a reasonable opportunity to develop and file a more substantive response before taking up the merits of the Procedural Motion.

9. On September 4, 2025, by Decision No. C25-0645-I, the Commission granted, in part, and denied, in part, the request in the Procedural Motion pertaining to setting a shortened notice and intervention period and set response time to the remaining requests in the Procedural Motion through the end of the established 20-day notice and intervention period.

10. On September 4, 2025, the Commission issued Decision No. C25-0645-I and served the decision on counsel for the County and Public Service. In addition, the Commission issued a Notice of Application Filed providing public notice of the Application and setting a 20-day intervention period.

11. On September 22, 2025, CEO timely filed a notice of intervention by right in accordance with § 40-6-108(2)(b), C.R.S. Included in that filing, CEO responded to the Procedural Motion.

12. On September 23, 2025, Staff timely filed a notice of intervention by right. Included in that filing, Staff responded to the Procedural Motion.

13. On September 23, 2025, COSSA timely filed a request for leave to intervene. Included in that filing, COSSA responded to the Procedural Motion.

14. On September 24, 2025, Bar E Ranch timely filed a notice of intervention as of right under Rule 1401(b) of the Rules of Practice and Procedure, 4 CCR 723-1, or, in the alternative, a motion to intervene permissively under Rule 1401(c), 4 CCR 723-1. Included in that filing, Bar E Ranch responded to the Procedural Motion and requested a hearing.

15. On September 24, 2025, the County filed a response to the Procedural Motion.

16. On September 30, 2025, Public Service filed a response opposing Bar E Ranch's intervention.

C. Discussion, Findings, and Conclusions

1. Completeness

17. The Commission finds the Application contains all the information required by applicable Commission rules and is therefore deemed complete for purposes of § 40-6-109.5, C.R.S., as of the effective date of this Decision.

2. *En Banc* Hearing

18. The Commission finds good cause to set the Application for hearing before the Commission *en banc*. The request in the Procedural Motion pertaining to the Commission hearing the matter *en banc* is therefore granted.

3. Mandatory Joinder and Interventions

19. The County is joined as an indispensable party as required by Rule 3705(a) of the Rules Regulating Electric Utilities, 4 CCR 723-3. As such, the County's intervention is moot.

20. The Commission acknowledges the notices of intervention of right filed by Staff and CEO. Staff is entitled to intervene of right in any Commission proceeding, per Rule 1401(e) of the Rules of Practice and Procedure, 4 CCR 723-1. CEO's intervention establishes that it has properly intervened as of right under § 40-6-108(2)(b), C.R.S.

21. COSSA and Bar E Ranch each filed motions for leave to permissively intervene.² Pursuant to Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, persons seeking permissive intervention must show the following, in pertinent part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.

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

22. COSSA states it is a nonprofit trade association that serves energy professionals, solar companies, energy storage providers, and renewable energy consumers in Colorado. COSSA states its membership comprises over 290 solar- and storage-related businesses and advocates representing thousands of Colorado employees including solar electric, solar thermal, and energy

² We grant the alternative motion to permissively intervene of Bar E Ranch and therefore do not address its claimed intervention of right. Consequently, we deny, as moot, Public Service's motion to strike the intervention of right and waive remaining response time to that motion.

storage contractors, many of whom operate in Public Service's franchised service territory.

COSSA claims a pecuniary and tangible interest on the following grounds:

[T]here will be direct impacts from the Commission's decision on the business interests of our members and the ability of Colorado to meet its statewide clean energy goals. The Colorado Power Pathway Project, particularly Segment 5, is critical for connecting areas of the state with high potential for solar and wind energy to the statewide grid. A denial of this project, or any decision that creates undue barriers to similar projects, would directly hinder the development and deployment of renewable energy resources, including the solar and storage resources developed by COSSA's member businesses.³

As representatives of the solar and clean energy industries, COSSA argues it can offer important perspectives on how the Commission's decision will impact the viability and timeline of renewable energy development across the state. COSSA states its participation will not unduly broaden the issues in this Proceeding, as they are directly related to the need and purpose of the project as a matter of statewide concern. COSSA states that Public Service and the County take no position on its request to intervene.

23. Bar E Ranch states it is a property owner in Elbert County that runs a horse breeding center on its land. Bar E Ranch states its land is part of the proposed Segment 5 and that Public Service intends to take its property through condemnation if the Commission reverses the County's denial. Bar E Ranch states: "not only does [it] have a substantial property and personal interest in the subject matter of the proceedings, but through its participation it intends to advance a narrow, threshold argument challenging the Commission's jurisdiction to hear and decide Xcel's application."⁴ Bar E Ranch states Public Service takes no position on its request to intervene.

24. In response, Public Service argues that Bar E Ranch's intervention motion fails to sufficiently identify a legal right that will be affected by this Proceeding and an interest in the case

³ COSSA Motion to Intervene at p. 3.

⁴ Bar E Ranch Motion for Permissive Intervention at p. 5.

that justifies its intervention. Public Service disputes the representation that it took no position and states that instead its position was to reserve its right to file a response. As to substance, Public Service challenges that Bar E Ranch's arguments for intervention lack details as to how this regulatory permit appeal proceeding stands to impact its pecuniary interests, since this Proceeding is not an eminent domain proceeding. Public Service states any compensation claims are for a future condemnation court, if necessary. Public Service also maintains that Bar E Ranch's alleged interests overlap with and will be sufficiently protected by the interests of the County. Public Service states County representatives have already attempted to deny the siting of the Pathway Project and points out the County's denials were alleged, in part, on the same issues raised by Bar E Ranch in its intervention motion.

25. We find that COSSA and Bar E Ranch have adequately demonstrated that their pecuniary or tangible interests will be affected and would not otherwise be represented by other parties in this Proceeding. We therefore grant their motions to intervene.

26. The following are parties to this Proceeding: Public Service, the County, Staff, CEO, COSSA, Bar E Ranch.

4. Procedural Motion; Statutory Deadline for Decision

27. Under § 29-20-108(5)(b), C.R.S., the appeal must be "conducted in accordance with the procedural requirements of section 40-6-109.5, C.R.S." Section 40-6-109.5, C.R.S., exclusively addresses deadlines for the Commission to issue a final decision. As relevant here, a Commission decision must be issued by February 5, 2026, per § 40-6-109.5(1), C.R.S. Section 40-6-109.5(1), C.R.S., allows the Commission to extend the time to issue a final decision by an additional 130 days if it finds additional time is necessary, which would extend the deadline to June 15, 2026.

28. In its Procedural Motion, Public Service requests the Commission expedite review of the Application and issue a decision on or before January 30, 2026. To this end, Public Service requests the Commission consider the Application *en banc* to help facilitate such expedited consideration. Public Service maintains its substantive request in the Application is narrow in scope and that time is of the essence in completing adjudication to avoid delay to the overall project. Public Service requests the Commission grant the Application without an evidentiary hearing; however, should it set the matter for hearing then the Company proposes a one-day hearing. Public Service states it provided advance notice of the Application to the County as well as to potentially interested persons. Public Service states construction on other segments is underway, and in some cases complete, and it has already received land use permitting approvals relating to all five segments of the Pathway Project.

29. In its response to the Procedural Motion, the County disagrees as to both the scope and proposed timeline of this Proceeding. The County opposes Public Service's framing of the case as narrow and argues that the Commission will have to carefully weigh the complex factual and legal issues presented in this Proceeding and render a decision that is fair and just. The County maintains a hearing is statutorily required. Further, it argues the administrative record is voluminous and the County may sponsor numerous witnesses. The County responds that any time pressure Public Service claims to be under is of its own doing because it chose to delay applying for the necessary permits from the County until November 2024, even though it had acknowledged the local planning process could take a year and a half to complete.⁵ The County requests the Commission find cause to extend the deadline for a decision in this Proceeding to the 250-days allowed under § 40-6-109.5(1), C.R.S.

⁵ County Response at p. 6 (citing Public Service CPCN application in Proceeding No. 21A-0096E).

30. In their responses to the Procedural Motion, Staff, CEO, and COSSA all state that they support Public Service's requests for expedited treatment. Bar E Ranch takes no position.

31. We deny the request for expedited treatment in the Procedural Motion including the request that all deadlines for discovery in Rule 1405(b), 4 CCR 723-1, be modified to seven calendar days. Instead, we find additional time is necessary for the Commission to issue a decision. On balance, we agree with the County that completing our adjudication of the Application may be difficult to complete within the default 120-day timeframe due to the potential complexities of this case, the number of intervenors, the need for a public comment hearing at a location selected by the County, and the press of business at the Commission. In addition, this Proceeding presents issues that the Commission rarely sees, which means more time may be necessary to issue a decision in this matter. All of this makes it impracticable for the Commission to issue a decision by February 5, 2026. As such, the Commission extends the deadline by 130 days to June 15, 2026, per § 40-6-109.5(1), C.R.S. Nonetheless, we acknowledge the Company's urgency and the support of Staff, CEO, and COSSA for expeditious resolution of this case. We therefore grant the request to hear the matter *en banc*, which will omit the time offered to parties for the potential stay and *en banc* review of a recommended decision, and we encourage the parties to confer on a proposed procedural schedule that does not use the full 250-day period.

5. Prehearing Conference

32. Under Rule 3705(b) of the Rules Regulating Electric Utilities, 4 CCR 723-3, a prehearing conference must be held within 15 days after the Commission deems the Application complete. Consistent with this deadline, and to allow parties as much time as possible to confer on the matters discussed below, and for the County to make the filing required by Rule 3705(d),

4 CCR 723-3, the prehearing conference will be scheduled for October 22, 2025, from 1:00 to 2:00 p.m.

33. During the prehearing conference, the Commission will discuss with the parties the setting of a procedural schedule to move this matter toward disposition. The following matters will be addressed: a public comment hearing⁶ date and location; the manner in which Public Service will provide notice of the public comment hearing; whether the parties have provided Public Service with a list of individuals and groups to receive notice of the public comment hearing per Rule 3705(f), 4 CCR 723-3; evidentiary hearing date(s) and manner (virtual or in-person); deadlines to make filings relating to the evidentiary hearing (*e.g.*, written testimony and other exhibits, witness lists, final exhibits, settlement agreements, stipulations, prehearing motions, joint witness examination matrix, and statements of position). The Commission may address other issues, including those which the parties raise.

34. Under Rule 3704, 4 CCR 723-3, the public comment hearing is to be held at a location specified by the County. Pursuant to Rule 3705(d), 4 CCR 723-3, ten days before the prehearing conference, *i.e.*, by October 13, 2025, the County must provide the parties and Commission information on its preferred location for the public comment hearing. The County is required to provide this information by making a filing in this Proceeding at least ten days before the prehearing conference.

35. If the County chooses to hold the public comment hearing in-person in Elbert County, during the prehearing conference, the parties should be prepared to suggest available locations in Elbert County for the hearing.

⁶ A public comment hearing is required per § 29-20-108(5)(b), C.R.S. and Rule 3704, 4 CCR 723-3.

36. The prehearing conference will be held by video-conference, using the web-hosted service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference over Zoom. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

37. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.⁷

38. *All parties are on notice that* failure to appear at the prehearing conference may result in decisions adverse to their interests. The Commission will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

6. Conferral

39. We direct Public Service to confer with the parties, before the prehearing conference, on all the above items and any discovery parameters. Public Service shall file a proposed consensus procedural schedule no later than October 17, 2025.

40. When considering potential evidentiary hearing dates, the parties are advised that the Commission has the following availability for hearing days in early 2026: February 2, 3, 4, 5, 6, 12, 13, 19, 20 and March 2, 3, 4, 5, 6. The parties are directed to design any proposed schedule to include no less than eight weeks between the end of the hearing and the requested decision date.

⁷ Participants will receive an email with the information to join the hearing at the email addresses on file with the Commission for this Proceeding. The hearing will be webcast, consistent with Commission practice; this means those wishing to observe the hearing may do so without the need to join the hearing as a participant.

II. ORDER

A. It Is Ordered That:

1. The Verified Application for Appeal of Elbert County's Denial of Requisite Siting Permits ("Application") filed by Public Service Company of Colorado ("Public Service") on August 26, 2025, is deemed complete on the date this Decision is effective.

2. The Application is set for hearing *en banc*.

3. Elbert County is joined as a party to this Proceeding.

4. Trial Staff of the Commission and the Colorado Energy Office's notices of intervention of right are acknowledged and they are parties to this Proceeding.

5. The motions to intervene filed by the Colorado Solar and Storage Association and Bar E Ranch Land Holdings, LLC, are granted.

6. The parties to this Proceeding are Public Service, Elbert County, Trial Staff of the Commission, the Colorado Energy Office, the Colorado Solar and Storage Association, and Bar E Ranch Land Holdings, LLC.

7. The Motion for Expedited Treatment, Shortened Notice and Intervention Period, Commission Hearing En Banc, and an Expedited Decision, filed by Public Service on August 26, 2025, is granted, in part, and denied, in part, consistent with the discussion above.

8. The deadline for a Commission decision in this Proceeding is extended by 130 days to June 15, 2026, per § 40-6-109.5(1), C.R.S.

9. Public Service shall confer with the parties to develop a proposed procedural schedule. Public Service shall file the proposed procedural schedule no later than October 17, 2025.

10. No later than October 13, 2025, Elbert County is required to submit a filing stating its preferred location for the public comment hearing, per Rule 3705(d) of the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-1.

11. A virtual prehearing conference is scheduled as follows:

DATE: October 22, 2025

TIME: 1:00 p.m. to 2:00 p.m.

PLACE: Join by video conference using Zoom

12. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the prehearing conference.

13. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

14. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 1 & 8, 2025.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners