

Decision No. R23-0150

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0408E

IN THE MATTER OF THE VERIFIED APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE DECOMMISSIONING OF THE COMANCHE UNIT 1.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
GRANTING UNOPPOSED MOTION TO APPROVE
STIPULATION AND APPLICATION, APPROVING
APPLICATION, AND CLOSING PROCEEDING**

Mailed Date: March 1, 2023

I. STATEMENT

1. On September 22, 2022, Public Service Company of Colorado (Public Service or Applicant) filed with the Commission a Verified Application (Application). Applicant seeks a Certificate of Public Convenience and Necessity (CPCN) to begin performing limited decommissioning work on Applicant's Comanche Unit 1 Electric Generating Station (Comanche Unit 1).

2. On September 23, 2022, the Commission issued a Notice of Application Filed (Notice). The Notice established a 30-day intervention period.

3. On October 20, 2022, Sierra Club timely filed its Motion to Intervene.

4. On October 21, 2022, the Colorado Office of the Utility Consumer Advocate timely filed its Notice of Intervention of Right.

5. On October 31, 2022, the trial staff of the Colorado Public Utilities Commission (Staff) timely filed its Notice of Intervention of Right.

6. On November 2, 2022, the Commission deemed the Application complete and referred this matter to an Administrative Law Judge (ALJ) by minute entry.

7. By Decision No. R22-0722-I, issued November 10, 2022, the ALJ granted Sierra Club's intervention, adopted a procedural schedule, and scheduled an evidentiary hearing for March 23, 2023.

8. On January 4, 2023, Applicant filed its Unopposed Motion to Approve Verified Application, Joint Stipulation of Public Service Company of Colorado, Staff of the Colorado Public Utilities Commission, the Colorado Office of Utility Consumer Advocate, and Sierra Club, Vacate the Procedural Schedule, and Request for Waiver of Response Time (Motion to Approve Application).

9. Also on January 4, 2023, the parties filed their Joint Stipulation of Public Service Company of Colorado, Trial Staff of the Colorado Public Utilities Commission, the Colorado Office of Utility Consumer Advocate and Sierra Club (Joint Stipulation, including one exhibit, a copy of which is attached hereto as Appendix A.).

II. FINDING AND CONCLUSIONS

10. The Motion to Approve Application is unopposed and seeks to have the Commission approve the Application, vacate the procedural schedule and evidentiary hearing, and waive the response time to the Motion to Approve Application.

11. The Joint Stipulation was filed by all parties and resolves all contested issues in the Proceeding. The Joint Stipulation further seeks to have the Commission enter a decision approving the Application.

12. By Decision No. C18-0761, issued September 10, 2018, in Proceeding No. 16A-0396E, the Commission found that early retirement of Comanche Unit 1 did not constitute the Public Service's ordinary course of business.¹ The Commission also acknowledged that a CPCN proceeding would permit further examination of the decommissioning of the facilities and the treatment of the site.

13. The Commission also determined that "a modified application proceeding limited to Commission review and approval of detailed cost estimates and schedules associated with the closure and decommissioning of the units will suffice." Rule 3103, 4 CCR 723-3 was waived, and Public Service was only required to provide the following elements:

- a) the information required in Commission Rules 4 CCR 723-3-3002(b) and 3002(c), consistent with conventional application filings;
- b) a description of the proposed facilities to be decommissioned and/or removed;
- c) estimated costs of the decommissioning and/or removal of these facilities; and
- d) the anticipated start date of the decommissioning and/or removal work, a schedule for these activities, and a completion date.

Decision C18-0761 at 35-36.

¹ While a CPCN was required for the dismantling, the Application does not seek a CPCN for an electric resource acquisition or for construction or expansion of generating facilities. See, § 40-2-129, C.R.S.

A. Joint Stipulation

14. Public Service is a public utility that provides regulated electric service to its ratepayers in Colorado.

15. On September 20, 2022, Public Service filed its Verified Application, supported by the Direct Testimony of Mr. Michael V. Pascucci, Mr. Gerald J. Kelly, and Ms. Laurie J. Wold.

16. Public Service is requesting a CPCN to move forward with its proposed initial Decommissioning Plan and to incur the associated initial decommissioning costs of approximately \$1.9 million on Comanche Unit 1. Accordingly, the Commission has jurisdiction over the subject matter of this Proceeding and the intervening parties.

17. The Parties stipulated to the discovery requests CPUC 1-6 and 1-7 propounded by Staff and the Applicant's responses thereto. Exhibit 1 to the Joint Stipulation (Stipulated Evidence).

18. The Commission previously approved the retirement of Comanche Unit 1 at the end of 2022 by Decision No. C18-0761 and required the filing of the Application. The Parties now agree that the Commission should grant a CPCN to move forward with its proposed initial Decommissioning Plan ("Comanche Unit 1 Decommissioning Plan") and to incur the associated initial decommissioning costs of approximately \$1.9 million. Further, the initial Comanche Unit 1 Decommissioning Plan should be approved, and the previously-approved accounting and rate treatment associated with Comanche Unit 1 decommissioning costs should be accepted.

19. The Parties agree that the Commission should find that approval of the Application is in the public interest and that it should be approved pursuant to Rules 3002, 3103, and Decision No. C18-0761 issued in Proceeding No. 16A-0396E, based upon the Application, supported by the Direct Testimony of Mr. Michael V. Pascucci, Mr. Gerald J. Kelly, and Ms. Laurie J. Wold, as well as the Joint Stipulation.

20. The ALJ finds and concludes that the Application, as amended and supplemented, is unopposed and, pursuant to § 40-6-109(5), C.R.S. and Rule 1403(a) of the Rules of Practice and Procedure, 4 CCR 723-1, will be considered under the modified procedure, without a formal hearing.

21. The Commission has an independent duty to determine matters that are within the public interest. *See Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

22. The Commission encourages parties to settle their differences in contested proceedings. Rule 1408, 4 CCR 723-1. Approval of the now uncontested Verified Application promotes administrative efficiency, expedites resolution, and avoids the hazards of litigation while minimizing litigation costs that customers must ultimately bear.

23. Applicant's Verified Application is accompanied by a sworn statement verifying sufficient facts and supported by testimony, attachments, and the Joint Stipulation.

24. The Parties agree that approval of the Verified Application, subject to the Joint Stipulation, is in the public interest. The request of the Parties proposes a fair and timely resolution of the issues in this proceeding.

25. Based upon the evidence in the record as a whole, the ALJ finds and concludes that the Joint Stipulation is just and reasonable and not contrary to the public interest and that

Public Service has sufficiently shown that approval of the Verified Application, subject to the Joint Stipulation, is not contrary to in the public interest. Accordingly, the ALJ will approve the Joint Stipulation and grant the Verified Application, subject to the Joint Stipulation.

26. Because the Motion to Approve Application is unopposed and the response time for the same has passed, Applicant's request to waive response time is moot.

27. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

III. ORDER

A. It Is Ordered That:

1. The Unopposed Motion to Approve Verified Application and Vacate the Procedural Schedule, filed by Public Service Company of Colorado (Applicant) on January 4, 2023, is granted.

2. The Joint Stipulation of Public Service Company of Colorado, Trial Staff of the Colorado Public Utilities Commission, the Colorado Office of Utility Consumer Advocate and Sierra Club, filed January 4, 2023, is approved without modification.

3. The Request for Waiver of Response Time, filed by Applicant on January 4, 2023, is denied as moot.

4. The procedural schedule and evidentiary hearing scheduled for March 23, 2023, are vacated.

5. The Verified Application for a Certificate of Public Convenience and Necessity to begin performing limited decommissioning work on Applicant's Comanche Unit 1 Electric

Generating Station, filed by Public Service on September 22, 2022, is granted, subject to the Joint Stipulation attached hereto as Appendix A and incorporated herein by reference.

6. Public Service shall comply with the Joint Stipulation and this Recommended Decision.

7. Proceeding No. 22A-0408E is closed.

8. 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.

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)



ATTEST: A TRUE COPY

A handwritten signature in black ink, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge