

Decision No. C23-0206-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0141E

IN THE MATTER OF PUBLIC SERVICE COMPANY OF COLORADO'S PETITION FOR DECLARATORY ORDER THAT NO COMMISSION AUTHORIZATION IS REQUIRED TO DECOMMISSION THE SALIDA UNIT ONE HYDROELECTRIC FACILITY, OR, IN THE ALTERNATIVE, APPLICATION FOR AUTHORIZATION TO DECOMMISSION THE SALIDA UNIT ONE HYDROELECTRIC FACILITY.

**INTERIM COMMISSION DECISION
ESTABLISHING NOTICE AND INTERVENTION PERIOD**

Mailed Date: March 28, 2023
Adopted Date: March 15, 2023

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. On March 1, 2023, Public Service Company of Colorado (Public Service or the Company) filed a request for declaratory order, or, in the alternative, an application concerning the decommissioning of the Salida Unit One hydroelectric facility. Public Service states that it is not aware of an existing requirement that mandates Commission approval of the decommissioning. Therefore, it seeks a declaratory order stating that Commission authorization is not required to decommission the unit. In the alternative, if the Commission denies the Company's request for a declaratory order, the Company requests that the Commission grant its application and approve the decommissioning as not contrary to the public interest, and that the Commission waive any

additional notice provision other than the notice provided pursuant to Rule 1206 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

2. Through this Decision, we notice the filing as an application that includes a request for declaratory order, and we grant Public Service's request for waiver of additional notice provisions. We establish a 30-day period for notice, interventions, and any responsive briefs. Interventions and any responsive briefs, including from Commission Staff, must be filed by **5:00 p.m. on April 27, 2023.**

B. Discussion

3. In its filing, Public Service explains that Salida Unit One has reached the end of its useful life and would require significant investment to repair, and is no longer being used the generate power. It states that it recently conducted an analysis at the request of the Federal Energy Regulatory Commission (FERC) and determined that the unit is no longer economical, and that it would be more cost-effective and in the public interest to decommission the unit.

4. The Company states that under the Federal Power Act, FERC has exclusive jurisdiction over its hydroelectric facilities, including exclusive authority to approve or modify the Company's decommissioning plan. It has filed an application for a license amendment with FERC that contains a decommissioning plan, including environmental- and cultural-related requirements. The Company expects a final order from FERC as early as this Spring.

5. Public Service explains that § 40-5-105, C.R.S., which generally requires Commission approval of the transfer of public utility property, is not applicable because there will be no transfer of property. It will retain ownership of the land and existing powerhouse at least until the decommissioning of Salida Unit Two, which is scheduled for 2027 at the earliest. Further,

the Company states that Commission Rule 1303, which requires Commission approval for the modification of a Certificate of Public Convenience and Necessity (CPCN) or the abandonment of any service or facility, does not apply. It states that because Salida Unit One began operation in 1906, prior to the Commission's issuance of CPCNs, the facility does not have a CPCN and Rule 1303 is not triggered.

6. The Company notes that it is not requesting any approval for the cost recovery of the decommissioning, and that such recovery would be addressed in a future rate case proceeding.

7. Public Service asks that Commission issue an order resolving any uncertainty regarding the decommissioning of Salida Unit One and declaring that no Commission approval is necessary for the decommissioning and abandonment of the unit.

8. Public Service requests that if the Commission does not issue an order declaring that no Commission authorization is required to decommission the unit, the Commission grant its included application and approve the decommissioning as not contrary to the public interest. Additionally, the Company requests that if the Commission treats the filing as an application, the Commission waive any additional notice provision other than the notice provided pursuant to Rule 1206. It contends there is good cause to grant its request for waiver, stating that this proceeding does not involve the termination of service to customers or issues of cost recovery and that notice pursuant to Rule 1206 will sufficiently ensure any person who may be affected has a reasonable opportunity to participate.

C. Findings and Conclusions

9. The request is most efficiently treated as an application, which proves the flexibility to make all necessary determinations within one proceeding. Pursuant to Rule 1304(f)(I) of the

Commission's Rules of Practice and Procedure, 4 CCR 723-I, a request for declaratory order may be addressed at the Commission's discretion within an application proceeding. Therefore, we notice the filing as an application that contains a request for declaratory order.

10. The filing is therefore construed and shall be processed as an application (Application).¹ After notice, intervention, and the consideration of any responsive briefs, the Commission will determine whether to take up the petition for declaratory order and, thereby, dismiss the Application. However, the Commission is not precluded from deciding the merits of the Application within this proceeding, regardless of whether it decides the request for declaratory order, consistent with Commission processes and rules.

11. The Application is available for public inspection by accessing the Commission's E-Filing system at puc.colorado.gov. **This Decision is the Commission's notice that the Application regarding the decommissioning of the Salida Unit One hydroelectric facility, which includes a petition for declaratory order that no Commission approval is necessary for the decommissioning and abandoning of the unit, has been filed.**

12. The Commission notice period for the Application shall extend from the mailed date of this Decision through **5:00 p.m. on April 27, 2023**. The intervention period will run concurrent with the notice period. Interventions, including those filed by Commission Staff, shall be due by **5:00 p.m. on April 27, 2023**. Responsive briefs must also be filed by **5:00 p.m. on April 27, 2023**.

¹ The proceeding number is revised accordingly. As initially processed, this proceeding was assigned Proceeding No. 23D-0100E; the proceeding number is revised to 23A-0141E.

13. We agree with Public Service that notice in addition to the notice required by Rule 1206 is unnecessary in this Proceeding. We therefore grant the Company's request for waiver of any additional notice provisions.

II. ORDER

A. **It Is Ordered That:**

1. The filing regarding the decommissioning of Salida Unit One, submitted by Public Service Company of Colorado on March 1, 2023, is accepted as an application containing a petition for declaratory order (Application), consistent with the discussion above.

2. Service of this Decision will provide notice of the Application to all interested persons, firms, and corporations.

3. The notice and intervention period shall expire at **5:00 p.m. on April 27, 2023**.

4. Any person desiring to intervene or participate as a party in this proceeding, including Staff of the Colorado Public Utilities Commission, shall file a petition for leave to intervene, or under the Commission's Rules of Practice and Procedure, file other appropriate pleadings to become a party, no later than **5:00 p.m. on April 27, 2023**. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments through the Commission's comment portal at <https://puc.colorado.gov/puccomments>. All persons who file an objection, notice of intervention as of right, motion to permissively intervene, or any other appropriate pleading shall do so in accordance with the instructions set forth in the Commission's Rules of Practice and Procedure and this Decision.

5. Responsive briefs shall be due from all parties by **5:00 p.m. on April 27, 2023**.

6. The Commission may consider the Application without a hearing if no notice of intervention as of right or motion to permissively intervene is timely filed, or no notice of intervention as or right or motion to permissively intervene requests a hearing or contests or opposes the Application.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 15, 2023.**

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director