

Decision No. C23-0376

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0096E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR COLORADO'S POWER PATHWAY 345 KV TRANSMISSION PROJECT AND ASSOCIATED FINDINGS REGARDING NOISE AND MAGNETIC FIELD REASONABLENESS.

**COMMISSION DECISION APPROVING JOINT MOTION
FOR PARTIAL VARIANCE FROM DECISION NO.
C22-0270 AND SOLICITING INPUT FROM PARTIES**

Mailed Date: June 6, 2023
Adopted Date: May 31, 2023

I. BY THE COMMISSION

A. Statement

1. On May 12, 2023, Staff of the Public Utilities Commission (Staff) and Public Service Company of Colorado (Public Service or Company) jointly filed a motion seeking a variance from provisions of paragraph 141 of Decision No. C22-0270, to clarify and establish the dates for continuing semi-annual reporting to be provided in this proceeding. Through this Decision, the Commission approves the requested variance.

2. We also solicit comments from the parties to this Proceeding on the advisability of modifying certain provisions of the timing performance incentive mechanism (PIM) that was established in Decision C22-0270 and modified by Decision C22-0430.

B. Motion for Variance

3. On June 2, 2022, the Commission issued Decision No. C22-0270 in this Proceeding, which, among other things, granted Public Service Company of Colorado (Public Service) a certificate of public convenience and necessity to construct segments 1-5 of the Colorado Power Pathway (CPP) and largely approved a Settlement Agreement proposed by the Company and several intervenors.

4. Section VIII of the Settlement Agreement specifies the contents of semi-annual Progress Reports to be filed by the Company on November 15 and May 15 annually until six-months after all components of the CPP are placed into service. Paragraph 141 of Decision No. C22-0270 accepts the reporting provisions contained in the Settlement Agreement, but specifies that the Commission “expects these semi-annual reports beginning on November 15, 2022, and no later than 120-days thereafter.”

5. On May 12, 2023, Public Service and Staff filed a Joint Motion seeking to clarify the filing schedule for the Company’s semi-annual CPP Progress Reports. Public Service and Staff highlight the discrepancy between the semi-annual reporting specified in the Settlement Agreement and accepted by the Decision, and the statement that the second and subsequent semi-annual reports would be delivered every 120-days. This latter provision of paragraph 141 sets up the expectation that Progress Reports would be delivered three times per year, rather than twice, as implied by the term “semi-annual.” Public Service and Staff ask for a variance to paragraph 141 to clarify that the Company will submit two, not three semi-annual reports.

6. The Motion also proposes that the Company move up the due date for its Progress Reports to October 21 and April 21 of each year (from November 15 and May 15 as specified in the Settlement Agreement). The Company explains that this timing will fall three weeks after the

end of the previous quarter and three weeks prior to the due date for the Independent Engineer's (IE) quarterly reports, giving the IE more time to review and consider the Company's Progress Reports prior to filing its own report. The Company reports that it conferred with all parties to this Proceeding, and that none oppose the relief it and Staff are seeking through the Motion.

C. Timing PIM

7. Paragraphs 100 through 107 of Decision No. C22-0270 specify the structure of a timing PIM intended to incent timely completion of all segments of the CPP. In its CPCN Application, Public Service projected that CPP segments 2 & 3 would be placed into service in September of 2025, and that the remaining segments would be placed into service over the subsequent two-years. At the time the Commission issued Decision No. C22-0270, the production tax credit (PTC) was set to expire, and the investment tax credit (ITC) was set to decline from 26 percent to 10 percent at the end of 2025. Estimates presented in Company testimony indicated that the inability of renewable energy projects to interconnect with the CPP and achieve commercial operation by the end of 2025 would cost consumers approximately \$300 million per GW of wind, and approximately \$100 million per MW of solar power.¹

8. Because late completion of CPP segments 2 & 3 would result in these dramatic increases in the costs of wind and solar projects, the Commission saw timely completion of these segments as particularly critical, and therefore established a timing PIM structure for these segments that included a daily penalty for late completion that escalated as the end of 2025 approached. The PIM for segments 2 & 3 also featured a flat daily bonus for early completion.

¹ Hearing Exhibit 103, Direct Testimony and Attachments of James F. Hill, pp. 17-18.

As originally established in C22-0270, the maximum bonus for early completion and the maximum penalty for late completion had equal magnitudes of \$10 million.

9. For the remaining CPP segments (segments 1, 4 and 5), the Commission established timing PIMs that were smaller in magnitude (relative to the estimated capital costs for these segments), imposed a flat (rather than escalating) daily penalty for late completion or bonus for early completion, and extended the penalty period (for late completion) and bonus period (for early completion) over a longer time period.

10. In response to RRR filed jointly by UCA, CEC and Climax Molybdenum Company (the Stipulating Parties), in Decision No. C22-0430 the Commission cut the maximum bonus available for early completion of segments 2 and 3 to \$5 million, and increased the maximum penalty for late completion of these segments to \$20 million. The timing PIMs established for the other CPP segments remained unchanged.

11. The Inflation Reduction Act (IRA), which President Biden signed into law on August 16, 2022, extends the PTC and ITC through at least 2033.

D. Findings and Conclusions

12. We find that the language in paragraph 141 of Decision No. C22-0270 specifying delivery of CPP Progress Reports every 120 days is in error, as the Commission expects two semi-annual reports per year, not three. Further, we agree with Public Service and Staff that submitting these reports earlier, as they propose, will enhance the value of the IE quarterly reports by giving the IE additional time to review and respond to the Company's Progress Reports. Accordingly, we approve the relief sought by the Motion. Public Service shall file subsequent CPP Progress Reports on April 21 and October 21 of each year, and this reporting shall continue

until no more than six months after all Project facilities are placed in service, as specified in the Settlement Agreement.

13. Regarding the timing PIM established for CPP segments 2 and 3 by Decision No. C22-0270 and subsequently modified by Decision No. C22-0430, we find that the enactment of the IRA constitutes a significant change that may warrant a modification of the PIM structure. We therefore solicit comment from the parties to this proceeding on whether and how the PIM structure for segments 2 & 3 should be altered. All such comments should be submitted to the Commission's E-Filing system no later than two weeks following the issuance of this Decision.

II. ORDER

A. The Commission Orders That:

1. The Joint Motion for Partial Variance from Decision No. C22-0270, filed by Public Service Company of Colorado (Public Service) and Staff of the Public Utilities Commission on May 12, 2023, is granted.

2. Public Service shall submit semi-annual Colorado Power Pathway (CPP) Progress Reports on April 21 and October 21 of each year, until no more than six months after all project facilities are placed in service, as discussed herein.

3. Parties wishing to submit comments related to potential changes to the timing Performance Incentive Mechanism for segments 2 and 3 of the CPP shall do so within two-weeks of the issuance of this Decision.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 31, 2023**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

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Commissioners