

Decision No. C23-0438

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.

**INTERIM COMMISSION DECISION GRANTING
REQUEST FOR A SHORTENED NOTICE AND
INTERVENTION PERIOD AND SETTING RESPONSE
TIME TO MOTION**

Mailed Date: June 30, 2023
Adopted Date: June 28, 2023

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

I. BY THE COMMISSION

A. Statement

1. On June 23, 2023, Public Service Company of Colorado (Public Service or Company) filed an Application for Approval of a Non-Standard Economic Development Rate (EDR) Contract, and for Determination No Certificate of Public Convenience and Necessity (CPCN) is Needed for Customer-Funded Transmission Facilities (Application). In a Motion for Expedited Procedures, Commission Decision, and Waiver of Commission Rule 1505(a) (Motion), filed with the Application, Public Service requests a shortened notice and intervention period of 14 days and that the Commission direct responses to the Motion be filed no later than the intervention deadline.

2. This Decision grants the Company's request for a shortened notice and intervention period for the Application and its request that the Commission direct responses to the Motion be filed no later than the intervention deadline. Requests for intervention and responses to the Motion shall be filed no later than **July 14, 2023**.

B. Discussion

3. By the Application, Public Service seeks expedited approval of a Non-Standard EDR Contract with QTS Aurora Infrastructure, LLC (QTS). Public Service states that on June 5, 2023, it executed two agreements with QTS to allow the parties to enter into a Non-Standard EDR Contract and for the construction of related transmission facilities, specifically approximately 1.4 miles of dedicated, double-circuit 230 kilovolt transmission line and associated transmission facilities that will connect QTS's planned data center campus in Aurora, Colorado to the Company's transmission system (collectively the QTS Transmission Facilities). Public Service states that the data center campus is expected to reach an average estimated total load of approximately 160 MW at full capacity. The Company explains that because of the expected load greater than 20 MW associated with the planned data center campus, as well as other customer-specific needs and consideration, it prepared QTS's EDR as a Non-Standard EDR contract in accordance with § 40-3-104.3, C.R.S., and the Unopposed Partial Settlement Agreement as modified and approved by the Commission through Decision No. C21-0333 in Proceeding No. 20A-0345E (EDR Settlement). Consistent with § 40-3-104.3(6), C.R.S., whether these contracts can ultimately move forward is subject to Commission approval of the Application.

4. Further, the Company explains that it included the QTS Transmission Facilities in its Amended Rule 3206 Report filed on July 15, 2022, in Proceeding No. 22M-0005E. By

Decision No. C22-0438 in that proceeding, the Commission determined the QTS Transmission Facilities require a CPCN or a formal determination that no CPCN is required. Public Service states that 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.

5. In its Application, Public Service requests that the Commission: (1) grant the Company's Application on an expedited basis, as supported in direct testimony and the Motion; (2) approve without modification the Company's proposed Non-Standard EDR Customer Service Agreement with QTS and find that the agreement complies with the requirements of § 40-3-104.3, C.R.S., and the EDR Settlement; (3) issue a formal determination that no CPCN is required for the Company to construct and operate the QTS Transmission Facilities, or in the alternative, grant a CPCN for the construction and operation of the QTS Transmission Facilities; (4) affirm that Public Service may track and defer expenses associated with preparing, filing, and litigating this Proceeding for future recovery through the EDR Electric Commodity Adjustment; and (5) grant any waivers, variances, or other relief necessary for the Company to carry out its requests and/or the Commission's final decision in this Proceeding. Additionally, Public Service requests that if the Application is unopposed or no hearing is requested, the Commission grant the Application without a hearing.

6. In the Motion requesting expedited procedures, Public Service states that the EDR Settlement recognizes that beneficial EDR opportunities may be time-sensitive or require greater regulatory predictability or flexibility. The Company states that due to supply chain challenges, the need for sufficient lead time to negotiate contracts with prospective tenants and customers,

and the significant lead time to complete additional transmission facilities, an expedited Commission decision is critical to ensure the economic viability of the QTS data center campus. It further explains that electricity constitutes 40 percent of the operational cost of a data center, meaning that QTS will require clarity and predictability regarding these costs to be able determine whether it should move forward with establishing operations in Colorado.

7. In its Motion, Public Service requests that the Commission: (1) issue notice of the Application within two business days of filing; (2) shorten the notice and intervention period in this Proceeding to 14 days; (3) deem the Application complete within eight days of the expiration of the notice and intervention period; (4) direct that responses to the Motion be filed no later than the intervention deadline, and issue a decision on the Motion at the Commissioners' weekly meeting following the response deadline; (5) direct Public Service to confer with intervenors and file a proposed procedural schedule by July 24, 2023; (6) if the Commission refers this matter to an Administrative Law Judge (ALJ), direct an initial Commission Decision under Rule 1404(d) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1-1404; and (7) issue a final Commission decision on the Application within 120 days from the requested deemed complete date. Additionally, Public Service states that if the Commission decides not to hear this matter *en banc* or direct an initial Commission decision under Rule 1404(d), the Commission should request the ALJ issue a recommended decision within 120 days of the Application's deemed complete date and shorten the time to file exceptions and responses to exceptions to seven calendar days each, respectively. To facilitate this alternative requested relief, Public Service requests a waiver of Rule 1505(a), 4 CCR 723-1.

C. Findings and Conclusions

8. The Application is available for public inspection at the Commission's offices located at 1560 Broadway, Suite 250, Denver, Colorado 80202, between 8:00 a.m. and 5:00 p.m., excluding weekends and state holidays. **This Decision is the notice than an Application for Approval of a Non-Standard Economic Development Rate (EDR) Contract, and for Determination No Certificate of Public Convenience and Necessity (CPCN) is Needed for Customer-Funded Transmission Facilities, has been filed by Public Service.**

9. The Commission finds good cause to grant Public Service's request for a shortened Commission notice and intervention period. The Commission notice period for the Application shall extend through July 14, 2023. The intervention period will run concurrent with the notice period. Intervention pleadings, including any notice of intervention of right filed by Staff, shall be filed no later than **July 14, 2023**.

10. Responses to the Motion requesting expedited procedures shall also be filed no later than **July 14, 2023**.

II. ORDER

A. It Is Ordered That:

1. The request of Public Service Company of Colorado (Public Service) to shorten the notice and intervention period for the Application for Approval of a Non-Standard Economic Development Rate Contract, and for Determination No Certificate of Public Convenience and Necessity is Needed for Customer-Funded Transmission Facilities (Application), as set forth in the Motion for Expedited Procedures, Commission Decision, and Waiver of Commission Rule 1505(a) (Motion), filed on June 23, 2023, is granted.

2. This Decision serves as notice of the Application filed by Public Service on June 23, 2023, which notice period shall extend through **July 14, 2023**.

3. Any person desiring to intervene or participate as a party in this Proceeding 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 **July 14, 2023**.

4. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may submit written comments through the Commission's website at colorado.gov/dora/puc. 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. Responses to the Motion requesting expedited procedures shall be filed no later than **July 14, 2023**.

6. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING

June 28, 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

TOM PLANT

Commissioners