

Decision No. C23-0472

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 DEEMING
APPLICATION COMPLETE, GRANTING MOTION FOR
LEAVE TO REPLY, REFERRING MATTER TO AN
ADMINISTRATIVE LAW JUDGE, AND DENYING, IN
PART, MOTION FOR EXPEDITED PROCEDURES**

Mailed Date: July 21, 2023
Adopted Date: July 19, 2023

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 makes numerous requests for expedited treatment of its Application.

2. As discussed below, we refer the matter to an Administrative Law Judge (ALJ) for a Recommended Decision.

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).

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; (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.

8. Through Decision No. C23-0438, issued June 30, 2023, the Commission set a shortened notice and intervention period ending July 14, 2023. Responses to the Motion were also required by this date.

9. Notices of Intervention by Right were timely filed by the Office of the Utility Consumer Advocate (UCA) and Trial Staff of the Commission (Staff). Requests for permissive intervention were filed by QTS Aurora Infrastructure, LLC, the Colorado Energy Consumers (CEC), and Climax Molybdenum Company. UCA, Staff, and CEC request a hearing in this matter.

10. In a Response to the Motion filed on June 30, 2023, UCA opposes requests for expedited procedures. UCA argues that Public Service has not shown good cause exists, or that the public interest will be served by, granting the requested relief. UCA states that significant facilities construction is required to fulfill the needs of the EDR ESA such that an expedited process is not in the public interest. UCA contends that the Company's "time is of the essence" argument is undercut by a construction estimate of at least 18 months for the QTS transmission facilities. UCA also highlights that the Company's Rule 3206 Report filed on April 29, 2022 in Proceeding No. 22M-0005E included the QTS Transmission Facilities, showing that Public Service and QTS began negotiations for the project over a year ago.

11. In Staff's Response to the Motion, filed July 13, 2023, Staff similarly notes that Public Service and QTS have been discussing this project for over a year. Staff argues that there must be sufficient time to evaluate the application to be sure that there are adequate protections for both EDR and non-EDR customers. Staff warns that the proposed facilities are of a magnitude that could result in costs to ratepayers, both from potentially stranded assets and environmental costs. In addition, Staff notes that there is no indication of any economic development benefits to an economically depressed area from the QTS that might otherwise support expedited consideration.

12. Staff also states that "[w]hether a CPCN is required for the construction of the QTS-related transmission facilities is a threshold issue that must be determined before any hearings in this proceeding."¹ Staff includes a proposed procedural schedule in its response to the Motion, but the proposed schedule does not incorporate the resolution of whether a CPCN is required.

¹ Trial Staff's Response to Motion, at p. 5.

13. On July 18, 2023, Public Service filed a Motion for Leave to Reply and Reply to Staff's Response to the Motion for expedited procedures, addressing Staff's statement that whether a CPCN is required is a "threshold issue" that must be determined before any hearings in this proceeding. The Company claims this is an incorrect statement of law, not supported by statute, Commission rule, Commission decision, or case law. The Company states it is concerned Staff is requesting additional procedures around a "threshold" determination "before any hearings in this proceeding," which could result in unnecessary delay. Public Service states that because it has submitted a fully supported alternative request for a CPCN with the application in this proceeding, the Commission can process Public Service's application in its entirety, regardless of whether the Commission determines a CPCN is required.

C. Findings and Conclusions

14. The Application contains all the information required by applicable Commission Rules and is therefore deemed complete.

15. Under Rule 1400(e) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, a motion for leave to file a reply must demonstrate either a material representation of fact, a surprise, newly discovered facts or issues, or an incorrect statement or error of law. We find good cause to grant Public Service's Motion for Leave to Reply and therefore consider its response. We agree with Public Service and clarify that a determination on whether a CPCN is necessary for the QTS Transmission Facilities is not a threshold issue that requires additional procedures, and that the Commission may process the Application in its entirety.

16. Due to nature of the approvals requested in the Application and the length of time that has passed since Public Service and QTS began discussing this project, we find that Public Service has not demonstrated good cause for the Commission to grant its requests for expedited

procedures and that such expedited procedures may not allow for the full analysis and consideration of the issues raised in the Application.

17. We refer this proceeding to an ALJ for the issuance of a Recommended Decision. We decline to adopt Public Service's requests for expedited procedures relating to a referral, including directing an initial Commission Decision under Rule 1404(d), 4 CCR 723-1, requesting that 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, and Public Service's associated request for a waiver of Rule 1505(a) 4 CCR 723-1. However, we trust that the ALJ will act with all due haste in addressing interventions and in adopting an appropriate procedural schedule and will conduct the hearing and issue a Recommended Decision within a reasonable timeframe.

18. Accordingly, we also decline to adopt the remaining requests for expedited procedures contained in the Motion, including requiring a proposed procedural schedule by July 24, 2023 and committing to issue a final Commission decision on the Application within 120 days from the requested deemed complete date.

II. ORDER

A. It Is Ordered That:

1. The Motion for Leave to Reply and Reply the Trial Staff's Response to Motion for Expedited Procedures, Commission Decision, and for Waiver of Commission Rule 1505(e), filed by Public Service Company of Colorado (Public Service) on July 18, 2023, is granted.

2. 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, filed by Public Service on June 23, 2023, is deemed complete.

3. This proceeding is referred to an Administrative Law Judge for the issuance of a Recommended Decision, consistent with the discussion above.

4. The remaining requests for expedited procedures contained in the Motion for Expedited Procedures, Commission Decision, and Waiver of Commission Rule 1505(a) filed by Public Service on June 23, 2023, including requests relating to referral, are denied, consistent with the discussion above.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 19, 2023.**

(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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Commissioners