Decision No. C24-0799

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0141E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2021 ELECTRIC RESOURCE PLAN AND CLEAN ENERGY PLAN.

COMMISSION DECISION DENYING PROPOSED PERFORMANCE INCENTIVE MECHANISM, REQUIRING REPORTING, AND DIRECTING FILINGS IN SEPARATE PROCEEDINGS

Issued Date: November 1, 2024
Adopted Date: October 23, 2024

TABLE OF CONTENTS

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission denies approval of the Pueblo Unit 3 performance incentive mechanism ("PIM")[1] filed by Public Service Company of Colorado ("Public Service" or the "Company") on April 30, 2024. The Unit 3 PIM is not approved but may be considered through appropriate pleadings in, or following, the Pueblo Just Transition Solicitation ("JTS").

2. Further we clarify that Public Service must provide in its electric resource plan ("ERP") Annual Reports a comprehensive description of actual and forecasted operations and maintenance ("O&M") expenses for full Unit 3 plant operations, including fuel handling costs, and the all O&M expenses must be broken down by fixed and variable costs. Reporting methods should be consistent from year to year and shall include a description of any changes in scope or methodology, if either were to change. And finally, while we remain open to additional alternative cost recovery proposals given our concerns expressed below, we require the Company to model and present the impact of the alternative cost recovery approach proposed here for 2023 and 2024 in its next electric rate case, consistent with the discussion below. We have grave concerns with the Company's potential ability to profit from failure to disclose critical cost information and express our ongoing expectation of robust and timely filings being provided in proceedings going forward.

[1] Initially, the Unit 3 PIM was supposed to be evaluated together with an emissions reduction PIM as a package of PIMs developed through a stakeholder process. When Public Service proposed the Unit 3 PIM on April 30, 2024, however, the Company represented that it and the stakeholders were not yet ready to bring forward and emissions reduction PIM. Subsequently, in Decision No. C24-0587-I, issued August 14, 2024, the Commission directed that the Company propose the emission reduction PIM either in the upcoming Pudeblo Just Transition Solicitation or through a separate filing.

B. Background

3. The concept of a stakeholder process to develop PIMs is present in the Updated Non-Unanimous Partial Settlement Agreement ("Phase I Settlement Agreement") that was filed on April 26, 2022.[2] The Phase I Settlement Agreement specifies that Company will file one or more PIM proposals with the Commission 60 days after the filing of the 120-Day Report with supporting testimony, and a 30-day comment period follows the filing of the PIM proposals. If the PIM proposals are contested, the Phase I Settlement Agreement contemplates that the Commission will conduct a limited and expedited hearing within 30 days of comment deadline and issue a decision on any PIM within 30 days of the hearing. The Phase I Settlement Agreement notes that "it is anticipated that this decision will follow any Phase II decision."[3]

4. In Decision No. C22-0459,[4] ("Phase I Decision"), the Commission approved the Phase I Settlement Agreement's proposed PIM stakeholder process but clarified that the Commission is not bound by the timeframes set forth in the Phase I Settlement Agreement regarding when a hearing should be held or when the Commission should issue a decision ruling on the proposed PIMs.[5] In addition to direction regarding the emission reductions PIM, the Phase I Decision directs that the stakeholder process also be used to craft PIMs addressing Unit 3's O&M expenses, capital costs, and availability factor,[6] and that the Company include in its PIM proposal "a narrative describing Unit 3's planned overhauls."[7]

[2] We have previously detailed the background and procedural history of this case in Decision No. C24-0052, issued January 23, 2024, ("Phase II Decision"), Decision No. C24-0161, issued March 13, 2024 ("First RRR Decision"), and Decision No. C24-0587-I, issued August 14, 2024. Here, we provide only that background and procedural history necessary for this Decision.

[3] Phase I Settlement Agreement, ¶ 51.

[4] Issued August 3, 2022.

[5] Phase I Decision, ¶ 389.

[6] Phase I Decision, ¶¶ 391-92.

[7] Phase I Decision, ¶ 86.

5. Following requested extensions from the Company, Public Service ultimately filed its proposed Unit 3 PIM in the testimony of Michael Pascucci on April 30, 2024. Public Service included that the Company first convened with Trial Staff of the Commission ("Staff"), Western Resource Advocates ("WRA"), and the Colorado Energy Office ("CEO") ("Initial PIM Discussion Parties") to begin discussions of both an emissions reduction PIM and the Unit 3 PIM, with meetings throughout January, February, and March of 2024. The Company includes that it convened two virtual discussions that invited all parties to the Proceeding.[8]

6. As detailed in Decision No. C24-0337,[9] regarding the Unit 3 PIM, Public Service explains that the proposed PIM takes the O&M and capital costs (as assumed in the Phase II modeling) and then uses the 502.8 MW capacity of Unit 3 together with the availability factor (again, from the Phase II modeling) to create a $/MW value. This is the baseline value to which the Company will compare its actual performance to determine if an incentive or disincentive is achieved each year. If costs exceed a ten percent deadband, then the Company would share 20 percent of the overages and vice versa. Disincentives and incentives are calculated on an annual basis as part of the annual Electric Commodity Adjustment and Purchased Capacity Cost Adjustment prudence reviews, and there is an annual $1 million cap on any incentive or disincentive. Public Service proposes to begin the Unit 3 PIM on January 1, 2025, and conclude it at the earlier of December 31, 2030, or the actual retirement date of Unit 3.

7. At the time of the filing, the Company represented that Staff and WRA both support the proposed Unit 3 PIM, and that CEO does not oppose it.[10]

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[8] Hr. Ex. 163 (Pascucci PIM Testimony), Rev. 1, p. 10.
[9] Decision No. C24-0337, issued May 17, 2024, at ¶ 8 (citing Hr. Ex. 163 (Pascucci PIM Testimony).
[10] Hr. Ex. 163 (Pascucci PIM Testimony), Rev. 1, p. 10.

8. In the subsequent months, the Commission issued a series of decisions directing the Company to file additional information pertaining to O&M and capital expense forecasts, requesting comment on an alternative cost recovery approach proposed by the Commission, and ultimately setting an abbreviated evidentiary hearing for the Unit 3 PIM,[11] which the Commission held on September 17, 2024.

9. At the September 17, 2024 evidentiary hearing, the Commission admitted the following exhibits as wells as their associated attachments: Hearing Exhibits 163-165 and Hearing Exhibit 2708.

10. On October 4, 2024, the Commission received statements of position ("SOPs") from Public Service, Staff, and the Colorado Energy Consumers ("CEC"). CEC's SOP is supported by the Office of Utility Consumer Advocate ("UCA") and Climax Molybdenum Company ("Climax"). CEC, UCA, and Climax oppose the Unit 3 PIM and recommend denying it. Noting the exclusion of the auxiliary boiler projects, the changes in the O&M forecasts, and the competing capital expenditure forecasts, CEC asserts that the "path to measuring Comanche 3's operational performance is riddled with too many twists and turns to maintain a clear line of sight to the original objectives of the PIM."[12] In addition, CEC asserts the many changed circumstances since the PIM's initial inception render it stale. At the same time, CEC points to the impending decisions regarding the CEP Delivery plan as to why setting a Unit 3 PIM now is premature.[13]

11. In a departure from the positions advanced in prefiled testimony and during the hearing, Staff's SOP also requests the Commission deny the Unit 3 PIM. Staff notes that the Company's current O&M and capital addition projects "are substantially lower than the Phase II

[11] *See* Decision No. C24-0587-I, Issued August 14, 2204 (reciting the additional information received from the parties and scheduling the evidentiary hearing).
[12] CEC's SOP, p. 2.
[13] CEC's SOP, p. 3.

baseline costs the Company incorporated into the modeling it used to create the Unit 3 PIM."[14] Staff further argues that the disconnect between the baseline costs and the current projects will likely continue because Public Service is modifying its operating processes and procedures at Unit 3 as it nears its retirement. Staff thus concludes that the underlying premise of the Unit 3 PIM is flawed.[15] Instead of the Unit 3 PIM, Staff suggests the Commission could address Unit 3's O&M and capital expenses in the JTS, just as the Commission plans to address the emissions reduction PIM in that proceeding.[16]

12. Through its SOP, Public Service continues to advance the Unit 3 PIM as proposed, noting that its proposed PIM meets the Phase I directives, including in how the PIM uses the Phase II modeling assumptions.[17] Public Service argues the Unit 3 PIM provides adequate operational flexibility to the Company to manage the unit while at the same time offering a meaningful incentive.[18] However, Public Service acknowledges the Commission's concerns regarding the Unit 3 PIM and suggests the Commission could also defer the development and implementation of a Unit 3 PIM until after Phase II of the JTS. The Company further asserts that deferral "allows for a more focused inquiry on the forecast for unit expenditures subject to a PIM through the JTS."[19]

13. Parties further discussed the alternative cost recovery proposal raised by the Commission. In its prefiled testimony, Staff initially supported the approach, opining that the alternative cost recovery proposal applies additional pressure on Public Service's capital additions. Noting that any capital additions will be stranded once the Unit 3 retires at the end of 2030, Staff

[14] Staff's SOP, p. 2.
[15] Staff's SOP, p. 2.
[16] Staff's SOP, pp. 3-4.
[17] Public Service's SOP, pp. 1-2.
[18] Public Service's SOP, p. 3.
[19] Public Service's SOP, p. 19.

opines that this added pressure on these costs makes intuitive sense.[20] In its SOP, however, Staff argues against adopting here the Commission's alternative cost recovery proposal. Staff reasons that the alternative cost recovery proposal does not remedy the fundamental flaw regarding how the Company's current O&M and capital expense projects are substantially below the Phase II baseline. Staff also notes that the capital addition costs are a relatively small portion of total Unit 3 costs.[21]

14. In its prefiled testimony, Public Service opposed the alternative cost recovery proposal, arguing that denying the return of and on otherwise prudently incurred costs, without any evaluation of the prudency of the costs raises issues with core tenets of regulation.[22] Public Service further asserts that the proposal might force the Company to choose between ensuring reliability by maintaining the operational status of the unit with capital expenditures or avoiding a potentially punitive cost recovery application to that capital expenditure. Public Service argues that this situation would not align Company and customer interests and is another reason why the proposal should be set aside.[23] Public Service reiterates these legal and evidentiary concerns in its SOP, arguing that under the alternative cost recovery proposal the auxiliary boiler would be treated as an expense and that such a finding "is premature and without record evidence."[24] Public Service notes that there has not yet been a prudence evaluation of the auxiliary boiler, which will occur in a rate case or in the evaluation of the cost recovery approach for the remaining net book value of the Company's retiring coal plants. The Company further states that "[s]etting the depreciation to zero and expensing a capital addition here lacks record support and

[20] Hr. Ex. 2708 (O'Neill Response), p. 17.
[21] Staff's SOP, p. 3.
[22] Hr. Ex. 164 (Pascucci Supplemental) Rev. 1, p. 29.
[23] Hr. Ex. 164 (Pascucci Supplemental) Rev. 1, p. 30.
[24] Public Service's SOP, p. 16.

raises legal concerns, and the Commission should both decline to do so and not advance the alternative PIM proposal for the same reasons."[25]

15. The Commission also received a robust public comment on September 16, 2024, opposing the Unit 3 PIM. For instance, the public comment asserts that the Company rearranged and increased the projected capital and O&M expenses in the Phase II modeling to make it easier for the Company to earn incentives under the PIM. The public comment also raises concerns that the Company could artificially lower the PIM's outage factor by using a reserve shutdown to mask a forced outage. Ultimately, the public comment requests that (1) the Commission reject the Unit 3 PIM, (2) the Commission direct the Company to stop spending money on the auxiliary boiler until the Company receives a CPCN, and (3) the Commission direct Public Service to prepare model runs in the JTS that minimize expenditures and operation of Unit 3 and retire it as soon as possible.

C. Findings and Conclusions

1. Unit 3 Performance Incentive Mechanism

16. We decline adoption of the Unit 3 PIM and, instead, defer consideration until during or after the JTS.

17. Notably, SOPs from Staff and CEC as well as the recent public comment all raise concerns with using a baseline derived from the Phase II modeling assumptions, which deviates from more recent forecasts set forth in the 2023 and 2024 ERP Annual Reports. We agree with observations in the public comments here that key assumptions that constitute the Unit 3 PIM's baseline did not receive much scrutiny during the Phase II process. Perhaps equally concerning, the Unit 3 PIM evaluates each year's expenses separately. Despite the Company's arguments to the contrary, we are concerned that separating expenses in this way allows the Company to

[25] Public Service's SOP, p. 17.

potentially manipulate the Unit 3 PIM. In addition, we empathize with concerns raised about the complexity of the PIM and whether the changing operations of the plant could further complicate future calculations. While there is evidence that the $1 million incentive or disincentive is perhaps material for the plant's budget and workplace culture, the significant flaws in the Unit 3 PIM create too much risk that the Company would be able to obtain the incentive without any meaningful change in behavior.

18. Rather than approve the Unit 3 PIM or attempt modifications given the concerns here, we defer consideration of the Unit 3 PIM through the course of or after the JTS, consistent with the suggestions from Public Service and Staff in their SOPs. Parties to the JTS are not prohibited from raising the concept of a Unit 3 PIM with modifications to the baseline or with alternative methods for calculating incentives and disincentives. As Public Service points out in its SOPs, deferral of the Unit 3 PIM may permit greater clarity regarding how the plant will actually operate in the remaining years of life, including with regard to operation under the reduced capacity factors.

2. Alternative Cost Recovery Proposal

19. In Decision No. C24-0337,[26] the Commission invited the parties to address an alternative cost recovery approach. Under this alternative approach, the Commission would allow Public Service to place into rate base prudently incurred Unit 3 capital expenditures up to whatever level such capital expenditures were forecasted as part of the Phase II modeling process. For all other prudently incurred capital expenditures over and above the Phase II modeling forecasts, the Commission would treat the expenditures like an expense item potentially eligible for full one-time cost recovery that could be litigated at the time of the next rate case. The intent of this proposal

[26] Issued May 17, 2024.

was to limit Public Service's ability to profit on capital expenditures that the Company did not accurately forecast.[27]

20. As referenced above, in its prefiled testimony, Staff generally supported the alternative cost recovery proposal, suggesting the Commission could adopt it for the period before the Unit 3 PIM is implemented, which would include the auxiliary boiler costs. Alternatively, Staff suggested the Commission order the Company to model and present the impact of alternative cost recovery approach for 2023 and 2024 in its next electric rate case.[28] In its SOP, however, Staff argues against adopting the Commission's alternative cost recovery proposal, reasoning that the alternative cost recovery proposal does not remedy the PIM's fundamental flaw and that the capital addition costs are a relatively small portion of total Unit 3 costs.[29]

21. As set forth above, Public Service oppose the alternative cost recovery proposal. Throughout its prefiled testimony and SOP, the Company raises legal and evidentiary concerns with the cost recovery proposal.[30]

22. We decline adopting the alternative cost recovery proposal in this Proceeding. However, we continue to have grave concerns with the Company's omission of critical costs early in appropriate processes. We see merit in requiring the Company to model and present the impact of the alternative cost recovery approach for 2023 and 2024 in a future proceeding, with the intent of placing additional pressure on substantial capital expenditures – namely the auxiliary boiler. We will continue to be open to consideration of alternative approaches but direct the Company to present and model the impact of the proposed alternative cost recovery approach for 2023 and 2024 in its next electric rate case.

[27] Decision No. C24-0337, ¶ 17.
[28] Hr. Ex. 2708 (O'Neill Response), pp. 17-18.
[29] Staff's SOP, p. 3.
[30] *See, e.g.*, Public Service's SOP, p. 17; Hr. Ex. 164 (Pascucci Supplemental) Rev. 1, pp. 29-30.

23. While we do not resolve this issue here, our concerns remain that we aim to reduce or eliminate the ability for the Company to profit from mistakes and failures to disclose pertinent information timely. With regard to Unit 3 especially, one of the primary goals should be to curb all nonessential costs as the plant nears retirement given the limited life of the plant. The Commission and parties require a clear view of upcoming expenses in future filings. It appears clear that the auxiliary boiler should have been predicted and included in anticipated expenses, at least as early as Phase I of this Proceeding. The Company's failure to identify this investment in its Phase I forecasts precluded the Commission from considering the substantial costs associated with the capital addition in considerations about the future life of the plant, when those decisions were being made in Phase I. Notably, the Company then completed installation of the project soon thereafter, prior to consideration of the proposed PIM associated with cost additions to the plant, which was specifically intended to contain costs associated with O&M and capital additions to the plant. In any event, substantial investments in retiring plants raise significant questions, as the Commission has repeatedly cautioned. In future proceedings, including the upcoming JTS, it will be imperative to know as soon as possible any further investments needed, including if significant investments could be repurposed following any early retirement determinations. Given these important policy concerns and our decision to not adopt the proposal here but to direct further exploration of it in a future rate case, we find Public Service's evidentiary and legal concerns to be unpersuasive.

24. We therefore direct the Company to include the discussed alternative cost recovery proposal as one presented option in its next electric rate case. The Company and parties to that future proceeding are encouraged to present further alternatives and solutions to explore in that record. We express our ongoing concerns, and we anticipate that the Company and future parties

will be responsive in helping reach meaningful solutions that limit expenses burdening ratepayers as Unit 3 nears retirement.

3. Electric Resource Plan Reporting

25. In the Phase I Decision, the Commission established enhanced reporting requirements for Unit 3. For instance, the Commission directed that in the annual progress reports Public Service files under Rule 3618, the Company must include the actual O&M expenditures for Unit 3, broken down by fixed and variable costs.[31]

26. As is evidenced by the various O&M forecasts put forth in this Proceeding, the Company's O&M reporting in its ERP Annual Reports has been inconsistent. In its prefiled testimony, Public Service acknowledges that the scope of the O&M forecasts changed between the 2023 ERP Annual Report and the 2024 ERP Annual Report. However, the Company does correct these discrepancies in its filings.[32]

27. At hearing, Mr. Pascucci testified that the Company will provide a comprehensive O&M forecast for full plant operations, as opposed to just overhauls, and will denote what O&M is fixed versus variable.[33] In its SOP, however, Public Service appears to condition this reporting commitment, stating that "*If* the Unit 3 PIM is approved by the Commission without modification, the Company commits to reporting in the ERP Annual Reports as set forth at hearing."[34]

28. We clarify that, going forward, Public Service must provide in its ERP Annual Reports a comprehensive description of actual and forecasted O&M expenses for Unit 3, including fuel handling costs, and that all O&M expenses must be broken down by fixed and variable. To the extent the Company finds it necessary to change the scope or methodology in the

[31] Phase I Decision, ¶ 52.
[32] Hr. Ex. 165 (Pascucci Responsive Testimony), pp. 20-21.
[33] Public Service's SOP, p. 18.
[34] Public Service's SOP, p. 18 (emphasis added).

ERP Annual Reports at any point, such a change shall be clearly identified and described. This directive in no way reduces the Company's other reporting obligations in the ERP Annual Reports.

4. Concluding Direction

29. While we deny the PIM here, our direction for future considerations, filing, and reporting, are consistent with ongoing concerns expressed throughout this Proceeding. Particularly for plants expected to retire in the relatively near future, we expect the Company will endeavor to minimize significant expenses. While we understand that some investments may be necessary and prudent, we anticipate heightened scrutiny where plant lives have limited time remaining, or could be considered for even earlier closure for a number of reasons.

30. Further consideration of a Unit 3 PIM or other regulatory structure should aim to avoid encouraging the possibility of gamesmanship. It should also help to ensure that large expenses be avoided, to the extent necessary, in the remaining years of a plant's actual or useful life to avoid stranded asset concerns. The Company should not profit from ineffective planning. That the auxiliary boiler was not identified until late in this process is troubling. Public Service must include necessary information early in consideration processes to enable Commission considerations. Regardless of whether PIMs are implemented, for large expenses the Company identifies as needed for the remaining life of Unit 3, we expect robust information, including with regard to any further use of the investment after the plant's closure.

31. Because ratepayers may ultimately bear the burden of investments made, cost recovery considerations are also imperative. Despite the alternative cost recovery proposal here not being adopted, our concerns remain that ratepayers should not be unnecessarily burdened due to poor planning, operations, or mismanagement. We invite and encourage the Company and

parties in future cases to explore creative solutions that balance appropriate cost recovery with ratepayer concerns.

32. Robust reporting continues to be necessary. This process has not instilled confidence in the Company's planning, cost containment, or transparency. And while there may be understandable and unexpected expenses at times, our ongoing expectation is that the Company will fulsomely and robustly include *all* pertinent information as early as possible in each relevant proceeding. We look forward to the Company and parties continuing to address these important issues in future process.

II. ORDER

A. The Commission Orders That:

1. The Pueblo Unit 3 Performance Incentive Mechanism filed by Public Service Company of Colorado ("Public Service") on April 30, 2024, is denied, consistent with the discussion above.

2. Public Service shall include the alternative cost recovery proposal in its next electric rate case, consistent with the discussion above.

3. Public Service must provide in its electric resource pan annual reports a comprehensive description of actual and forecasted operations and maintenance expenses for Unit 3, as clarified above.

4. This Decision is effective immediately upon its Issued Date.

B. ADOPTED IN MEETING AND COMMISSIONERS' WEEKLY MEETING October 23, 2024.

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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners

ATTEST: A TRUE COPY

Rebecca E. White,
Director