

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 03V-416E

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IN THE MATTER OF THE PETITION BY PUBLIC SERVICE COMPANY OF COLORADO  
FOR A VARIANCE IN THE FILING DATE OF ITS ELECTRIC LEAST-COST RESOURCE  
PLAN.

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**ORDER GRANTING PETITION**

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Mailed Date: October 30, 2003  
Adopted Date: October 22, 2003

**I. BY THE COMMISSION**

**A. Statement**

1. On September 25, 2003, Public Service Company of Colorado (Public Service or Company) filed its Verified Petition for a Variance in the Filing Date of its Electric Least-Cost Resource Plan (Petition for Variance) and for Shortened Response Time. The Petition for Variance requests that we extend the time within which Public Service must file its Least-Cost Resource Plan (LCP) by an additional six months, or until April 30, 2004. By Decision No. C03-1124, the Commission shortened the response time to the Petition for Variance and set October 13, 2003 as the filing deadline for any responses to the Petition for Variance.<sup>1</sup>

2. On October 8, 2003, the Company filed a verified supplement to the Petition for Variance and a motion for extraordinary protection of confidential material. Public Service states that it provided the additional information, upon request of the Staff of the Colorado Public Utilities Commission (Staff), to show its specific resource acquisition strategy for acquiring short-term resources. The Company requests that access to this confidential information be

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<sup>1</sup> Because October 13, 2003 was a State holiday, the deadline was extended to October 14, 2003.

limited to the Commissioners and members of its staff who have filed non-disclosure agreements or members of the Office of Consumer Counsel who have filed non-disclosure agreements. Public Service seeks the extraordinary protection because of the highly sensitive nature of its acquisition strategy and possible irreparable harm if this strategy were to be revealed to other participants in the wholesale marketplace. Good cause having been stated, we grant the request for extraordinary protection of confidential material associated with response 1-1a to Staff's request for information.

3. The Commission has reviewed the Petition for Variance and finds that it contains all of the information required by Rule 59 of the Commission's Rules of Practice and Procedure. Thus, the Commission deems the Petition for Variance complete.

4. According to the Company, the purpose of this Petition for Variance is to allow it to explore the development of a new rate-based 500 MW to 750 MW coal-fired unit as an addition to either its Pawnee or Comanche generating stations. The Company contends that its preliminary analyses show that additional coal-fired generation should be part of the Company's LCP when the price of natural gas is above \$3.00 per MMBtu. In addition to the time to study a coal-fired unit, the Company states it is obligated under its existing wholesale contracts to offer participation in new generation facilities to certain wholesale customers. Consequently, it needs time to explore partnership opportunities with other Colorado utilities in the venture.

5. A number of parties filed interventions: Tri-State Generation and Transmission Association, Inc.; Intermountain Rural Electric Association; the Colorado Renewable Energy Society (CRES); the Colorado Independent Energy Association (CIEA); CF&I Steel, LP; Climax Molybdenum Company; Western Resource Advocates (WRA); City and County of Denver; Holy

Cross Energy; and the Colorado Office of Consumer Counsel. The Commission waives any remaining response times for the interventions and will grant all of the interventions for the purpose of the Petition for Variance only.

6. Only WRA, CRES, and CIEA provided comments on the merits of the Petition for Variance. WRA does not oppose the request, but notes that there may be opportunities for immediate investment in energy efficiency and renewable energy resources that could displace marginal gas-fired generation. As a result, WRA encourages Public Service to begin evaluating energy saving Demand-Side Management (DSM) programs now and not wait until six months from now. WRA recommends that the Commission direct Public Service to present a comprehensive strategy for achieving near-term energy cost savings for ratepayers.

7. The thrust of CRES' response suggests that the Commission and Public Service should take a leadership role in the "natural gas crisis" in the state. These leadership actions would include: 1) an immediate release of Requests for Proposals (RFPs) to add any form of generation or DSM resources which will reduce the demand for natural gas; 2) massively implement natural gas conservation and efficiency measures for customers; 3) jointly convene a Natural Gas Crisis Task Force to mobilize public and private resources; (4) work with the General Assembly to pass legislation to encourage performance contracting, statewide energy efficiency building codes, and fees on inefficient equipment; and 4) a fund to provide investments for efficiency investments through a small increase in utility fees.

8. CIEA opposes the requested variance. It disagrees for two reasons. First, it contends that nothing in the variance request provides information on what prevented Public Service's management from issuing its coal plant study directive earlier such that the LCP's

October 31st deadline could have been met. Second, it contends that Public Service failed to state why the coal plant to be studied had to be self-owned and not competitively bid. In this regard, CIEA believes that the Company is attempting to "gut" the competitive acquisition requirement in LCP Rule 3610 (the 250 MW utility self-build carve out) with this Petition for Variance. According to CIEA, its members are fuel agnostic—that is, they are capable of building power plants that run on wind, solar, hydro, natural gas, coal, biomass, or waste. Consequently, granting an extension for the stated purpose would violate a substantive Commission rule, which is bad policy and bad precedent.

## **B. Findings**

9. The Commission finds that no hearing is necessary on this matter. Extending the time for complying with a Commission requirement is a matter within our discretion if we find that good cause for such an extension is stated. The information provided in the Petition for Variance, as supplemented, along with the three responsive pleadings is sufficient for the Commission to issue its ruling. The matter before the Commission is whether to grant a six-month extension of time for Public Service to file its 2003 LCP, not to decide whether to issue RFPs or to issue directives to the Company to present a comprehensive strategy for achieving near-term energy cost savings for ratepayers. The latter issues ostensibly concern the merits of the LCP, and, of course, the merits of an as-yet-to-be filed plan are not now before us.

10. Although the basis for the variance is to allow for a study that may be in excess of the self-build cap of our LCP rules, the spirit of LCP is that all resources, including coal-based generation, receive a full and fair evaluation in resource planning. To the extent that this variance allows Public Service to fully and fairly evaluate a coal-based resource, the spirit of

LCP is upheld. Of course, we are not addressing whether Public Service would be allowed to exceed the self-build cap.

11. In this regard, the Commission disagrees with CIEA that granting the Petition for Variance would establish bad policy or bad precedent. If the Company's claim is correct that a coal plant can be a cost-effective resource when natural gas costs get above \$3.00 per MMBtu, then CIEA members may be able to bid a coal-based generation resource that can compete head-to-head with any proposed rate-based coal unit. However, that determination along with other relevant issues relating to Public Service's LCP will be made after the LCP is filed. CIEA can examine and scrutinize the Company's analysis at that time.

12. Good cause having been shown, we grant the request to extend by six months the Company's filing of its 2003 Least Cost Plan until April 30, 2004.

13. In granting the extension, we do not modify the dates for other actions required in the rules, for example: 1) the planning period as required in Rule 3600(i) still commences on October 31, 2003; and 2) annual progress reports as required in Rule 3614 shall still be due on future October 31st.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Commission will grant Public Service Company of Colorado's request for extraordinary protection of confidential material in response 1-1a.

2. The Commission waives any remaining response times for petitions for intervention.

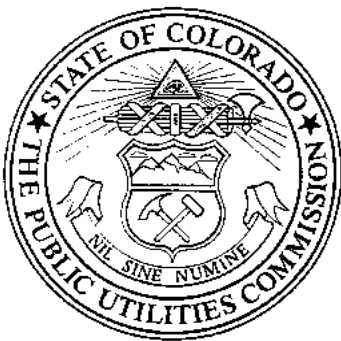
3. The Commission grants the following requests for intervention for the limited purpose of addressing the Petition for Variance: Tri-State Generation and Transmission Association, Inc.; Intermountain Rural Electric Association; the Colorado Renewable Energy Society; the Colorado Independent Energy Association; CF&I Steel, LP; Climax Molybdenum Company; Western Resource Advocates; City and County of Denver; Holy Cross Energy; and the Colorado Office of Consumer Counsel.

4. The Verified Petition for a Variance in the Filing Date of its Electric Least-Cost Resource Plan by Public Service Company of Colorado is granted, consistent with the above discussion.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
October 22, 2003.**

(S E A L)



**ATTEST: A TRUE COPY**

**Bruce N. Smith  
Director**

**THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO**

**GREGORY E. SOPKIN**

**POLLY PAGE**

**JIM DYER**

Commissioners

