

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16A-0117E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF THE 600 MW RUSH CREEK WIND PROJECT PURSUANT TO RULE 3660(H), A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE RUSH CREEK WIND FARM, AND A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE 345 KV RUSH CREEK TO MISSILE SITE GENERATION TIE TRANSMISSION LINE AND ASSOCIATED FINDINGS OF NOISE AND MAGNETIC FIELD REASONABLENESS.

PROCEEDING NO. 16V-0314E

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE COMPANY OF COLORADO FOR A VARIANCE OF THE CONSTRUCTION SCHEDULE FOR THE PAWNEE TO DANIELS PARK 345 KV TRANSMISSION PROJECT.

**INTERIM DECISION ADDRESSING INTERVENTIONS,
CONSOLIDATING PROCEEDINGS, GRANTING RULE
WAIVERS, SETTING FILING DATES,
ESTABLISHING DISCOVERY PROCEDURES,
SCHEDULING PREHEARING CONFERENCE,
GRANTING PROTECTIVE ORDER, REQUIRING
FILINGS, AND EXTENDING DEADLINE FOR DECISION**

Mailed Date: June 17, 2016

Adopted Date: June 15, 2016

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I. BY THE COMMISSION

A. Statement

1. This Decision grants, with modifications, the Motions to Adopt Procedural Schedule, to Expedite Review of the Application, and Requesting Waivers (Procedural Motion) filed by Public Service Company of Colorado (Public Service or Company) on May 13, 2016, in Proceeding No. 16A-0117E. We grant the requests for permissive interventions and consolidate Proceeding Nos. 16A-0117E and 16V-0314E, as discussed below. We also grant, in part, a motion for protective order filed by Public Service.

2. Answer Testimony in this consolidated matter shall be filed no later than July 27, 2016. Rebuttal Testimony and Cross-Answer Testimony shall be filed no later than August 22, 2016. All prehearing motions shall be filed no later than August 29, 2016, and responses to

prehearing motions shall be filed no later than September 1, 2016. Final post-hearing statements of position shall be filed no later than September 19, 2016.

3. A prehearing conference is scheduled for September 2, 2016. Hearings in this consolidated matter are scheduled for September 7 through 9, 2016, consistent with Decision No. C16-0423-I, issued May 19, 2016.

4. Public Service shall file a modified Non-Disclosure Agreement in accordance with our approval, in part, of its Motion for Protective Order no later than five days following the effective date of this Decision. Public Service also shall file supplemental Direct Testimony addressing the Pawnee-Daniels Park Project no later than 21 days following the effective date of this Decision, consistent with the discussion below. Finally, Public Service shall file an amended application and amended Direct Testimony to remove its request for the Commission to establish a baseline and methodology to determine the potential level of net economic benefits for a potential future request for “extra profits” under 4 *Code of Colorado Regulations* (CCR) 723-3-3660(g) of the Rules Regulating Electric Utilities, consistent with the discussion below. The amended application and revised testimony shall be filed no later than 21 days following the effective date of this Decision.

B. Rush Creek Wind Project Application

5. On May 13, 2016, in Proceeding No. 16A-0117E, Public Service filed an Application for Approval of the 600 MW Rush Creek Wind Project, Certificate of Public Convenience and Necessity for the Rush Creek Wind Farm, and a Certificate of Public Convenience and Necessity for the 345 kV Rush Creek to Missile Site Generation Tie Transmission Line (Rush Creek Wind Project Application).

6. Public Service states that the Rush Creek Wind Project will include 300 Vestas model V110 wind turbines, which will be built in Colorado and have a nameplate capacity of 2 MW each. The project will comprise two wind farms (Rush Creek I and II) and a new 90-mile 345 kV transmission tie line to interconnect with the Company's system at the Missile Site Substation. Public Service estimates that the total cost of the project will be \$1.036 billion: \$915 million is the projected construction costs of the wind generation facilities and \$121.4 million is the cost of the transmission tie line.

7. Invenergy Wind Development North America, LLC (Invenergy) currently is developing the Rush Creek I and II sites. Public Service has entered into a Purchase and Sale Agreement for the sites, such that when they are "construction-ready" and meet other conditions precedent to closing, the Company will acquire a 100 percent equity stake in both. Public Service explains that the opportunity to partner with Invenergy enables the project to take advantage of the full benefits of the federal Production Tax Credit (PTC) for wind generation facilities.

8. Public Service seeks seven specific items from the Commission:

- 1) Approval to develop, own, and operate the Rush Creek Wind Project pursuant to § 40-2-124(1)(f)(I), C.R.S., and Rule 3660(h);
- 2) A Certificate of Public Convenience and Necessity (CPCN) for Rush Creek I and II;
- 3) A CPCN for the Rush Creek 345 kW transmission tie line;
- 4) Findings on noise and magnetic fields for the transmission tie line;
- 5) Approval of a cost recovery proposal pursuant to § 40-2-124(1)(f)(IV), C.R.S., and Rule 3660(i);
- 6) Approval of a baseline and calculation methods for potential future use by the Company to earn an "extra profit" on the project pursuant to § 40-2-124(1)(f)(II), C.R.S., and Rule 3660(g); and
- 7) Approval of four supporting studies, including the Coal Cycling Cost Study, Flex Reserve Adequacy Study, Wind Effective Load Carrying Capacity Study, and Wind Integration Study.

9. In its Procedural Motion, Public Service states that it is necessary for the Commission to issue a final decision on the proposed Rush Creek Wind Project by November 10, 2016 in order for the Company to meet the safe harbor requirements of the maximum PTC to apply.

C. Pawnee-Daniels Park Project Variance Petition

10. On April 29, 2016, in Proceeding No. 16V-0314E, Public Service filed a Petition for Variance of Commission Decision for Accelerated Construction Schedules (Pawnee-Daniels Park Project Variance Petition). Through its Petition, Public Service seeks a variance to the Pawnee-Daniels Park Project construction schedule ordered in Decision Nos. R14-1405 issued November 25, 2014, and C15-0316 issued April 9, 2015.¹

11. The Pawnee-Daniels Park Project includes a new 345 kV transmission line between the Pawnee Generating Station and the Daniels Park Substation, a new Harvest Mile Substation, and a new 345 kV circuit from Smoky Hills to Daniels Park.

12. Decision No. R14-1405 established, and Decision No. C15-0316 affirmed, a construction schedule allowing Public Service to begin work on the Pawnee-Daniels Park Project no earlier than May 1, 2020. In its Petition, Public Service seeks to begin the project in 2017, with an in-service date of October 30, 2019.

13. Public Service states that there is a need for an expedited construction schedule, as evidenced by eight interconnection study requests for interconnection at the Missile Site Substation. The Company states that four of the study requests were withdrawn after the need for the Pawnee-Daniels Park Project was identified by studies. Additionally, Public Service

¹ Proceeding No. 14A-0287E.

asserts that the expedited construction schedule will allow the Company, and its rate payers, to take advantage of the PTC available for wind renewable energy resources.

D. Procedural Background

14. On May 2, 2016, we issued a Notice of Petition Filed requiring pleadings to become a party in Proceeding No. 16V-0314E to be filed no later than June 1, 2016.

15. On May 18, 2016, the Colorado Office of Consumer Counsel (OCC) filed a Notice of Intervention of Right and Request for Hearing in Proceeding No. 16V-0314E. The OCC also filed a Motion to Consolidate, requesting that the Commission combine Proceeding Nos. 16A-0117E and 16V-0314E.

16. On May 19, 2016, we set the Rush Creek Wind Project Application for hearing before the Commission *en banc* and scheduled the evidentiary hearing for September 7 through September 9, 2016.² We agreed with Public Service that expedited procedures are necessary given the potential benefit to the Company's customers from capturing the full federal PTC for wind resources should the Commission approve the acquisition of the Rush Creek Wind Project and issue CPCNs for Rush Creek I, Rush Creek II, and the interconnecting transmission tie line. We also shortened the notice and intervention period for Proceeding No. 16A-0117E. Intervention filings were due on June 1, 2016. Persons seeking intervention were allowed to respond to Public Service's Procedural Motion in their requests for intervention or other pleadings due on June 1, 2016.

² Decision No. C16-0423-I, issued May 19, 2016, Proceeding No. 16A-0117E.

17. On May 27, 2016, we set response time to the OCC's Motion to Consolidate to June 1, 2016, consistent with the intervention period for Proceeding No. 16V-0314E and the shortened intervention period for Proceeding No. 16A-0117E.³

18. We deemed the Rush Creek Wind Project Application complete on June 8, 2016.

E. Public Service Motion for Leave to Reply to Staff and WRA

19. Public Service seeks to reply to certain aspects of the responses to the Company's Procedural Motion submitted by Western Resource Advocates (WRA) and the Staff of the Colorado Public Utilities Commission (Staff). Specifically, Public Service requests an opportunity to reply to WRA's proposals for discovery and to WRA's recommendations for the severing from this proceeding the issues surrounding the calculation of net economic benefits and "extra profits" pursuant to § 40-2-124(1)(f)(II), C.R.S., and Rule 4 CCR 723-3-3660(g). Public Service also seeks leave to respond to Staff's request that the Commission strike the portions of the Company's Rush Creek Wind Project Application and Direct Testimony related to the "extra profit" matter.

20. Public Service states that it has reached an accommodation with WRA on the discovery issue and argues that the suggestion of WRA and Staff that the "extra profit" issue be severed from this proceeding is, in effect, a motion. Public Service argues that it is appropriate for the Commission to grant leave for it to reply to "this newly raised procedure."

21. We agree that Public Service should have an opportunity to respond to WRA and Staff on these points and grant Public Service's Motion for Leave to Reply.

³ Decision Nos. C16-0458-I and C16-0459-I, issued May 27, 2016, Proceeding Nos. 16V-0314E and 16A-0117E, respectively.

F. Interventions**1. Rush Creek Wind Project Application****a. Discussion**

22. Staff, the OCC, and the Colorado Energy Office (CEO) each filed notices of intervention by right.

23. Staff states that it will attempt to independently verify Public Service's assertions that the Rush Creek Wind Project, if built, will provide significant cost savings to customers. Staff intends to review the assumptions used by the Company in both its Strategist modeling work and worksheet calculations. Staff does not, through its intervention filing, state whether it opposes or supports the Application.

24. The OCC states that it is concerned about certain issues presented by Public Service. Within its filing, the OCC states specific concerns, including whether the Rush Creek Wind Project Application meets statutory and rule requirement standards. Consistent with the standard required in § 40-2-124(1)(f), C.R.S., the OCC states it intervenes to review whether the costs associated with the project are reasonable compared to the cost of similar eligible energy resources available in the market.

25. CEO states that it is statutorily mandated to promote renewable energy resource development in Colorado. CEO claims that Public Service's Rush Creek Wind Project Application, if approved, will increase wind generation in the state, which CEO supports.

26. Invenergy requests to participate as an *amicus curiae*. Invenergy states that the projects that are the subject of the Rush Creek Wind Project Application are being developed by two of its wholly owned subsidiaries. Invenergy requests that it be permitted to provide legal analysis in this proceeding to assist the Commission, including whether the projects satisfy the

requirements of § 40-2-124(1)(f), C.R.S., and Rule 4 CCR 723-3-3660(h). No party filed response to Invenergy's request and it is therefore unopposed.

27. Several potential parties requested permissive intervention, including: Holy Cross Electric Association, Inc., Yampa Valley Electric Association, Inc., Intermountain Rural Electric Association, and Grand Valley Rural Power Lines, Inc. (jointly, Joint Cooperatives); the City of Boulder (Boulder); Tri-State Generation and Transmission Association, Inc. (Tri-State); Climax Molybdenum Company and CF&I Steel, L.P. (jointly, Climax/CF&I); Interwest Energy Alliance (Interwest); Colorado Energy Consumers (CEC); the City and County of Denver (Denver); Southwest Generation Operating Company, LLC (SWGen); WRA; Rocky Mountain Environmental Labor Coalition (RMELC) and Colorado Building and Construction Trades Council, and AFL-CIA (CBCTC) (jointly, RMELC/CBCTC); Colorado Independent Energy Association (CIEA); Sustainable Power Group, Inc. (sPower or Sustainable Power); and a coalition of ratepayers (Ratepayer Coalition). Each has argued that its interests would not otherwise be adequately represented without intervention in this matter.

28. The Joint Cooperatives are each a cooperative electric association. The Joint Cooperatives state that each purchases a substantial portion of its wholesale electric power and energy from Public Service through a purchase power contract that may be affected by the outcome of Proceeding No. 16A-0117E. They expect that the proposed Rush Creek Wind Project will have an impact on the generating resource allocations of each cooperative, which will create a rate impact for its member-customers.

29. Boulder states that it is a large customer of Public Service that has historically participated in most of the Company's resource acquisition proceedings. Boulder states that it "applauds" Public Service's efforts to shift from fossil fuels. Nevertheless, Boulder states that,

because it has created a municipal electric utility, it has an interest in ensuring its departure from the Company's system is taken into account when the acquisition of new generation facilities are being considered.

30. Tri-State states that Public Service's proposed transmission line will tie into the interconnected transmission system that includes Tri-State assets. Tri-State argues that the proposal therefore may affect Tri-State operations of its transmission system and its plans for use of the interconnected transmission system.

31. As Public Service's largest retail electric customers, Climax/CF&I claim that the Rush Creek Wind Project Application, if approved, may affect retail rates substantially, including their electricity costs, and "possibly the reliability" of the service necessary to provide mining and steel production.

32. Interwest is a Colorado nonprofit corporation and a trade association of wind, utility-scale solar, and other renewable energy project developers and equipment manufacturers. Because the project is the largest renewable energy project in Colorado to date, Interwest states that Proceeding No. 16A-0117E, including the vetting of the wind and reserve studies, will affect its members' businesses through purchase power agreements (PPAs) and engineering, planning, and construction contracts.

33. CEC is an association of large industrial and commercial customers. CEC states that its "members are generally supportive of the purported economic and environmental benefits that the Project may provide."⁴ However, CEC states that the Rush Creek Wind Project

⁴ CEC Motion to Intervene at ¶ 4.

Application, if approved, will have a direct and substantial impact on CEC's interests and the electricity charges made by its members.

34. Denver notes that it routinely participates in Public Service proceedings and "supports [Public Service's] effort to develop, own, and operate clean energy resources."⁵ Denver purchases electricity from Public Service through a franchise agreement and states that, because it and its citizens will be affected by the proposal, the city intends to address ratepayer impacts and compliance with renewable energy requirements.

35. SWGen is an independent power producer (IPP) with generation facilities in Colorado and its corporate office in Denver. SWGen states that it has a direct interest in securing and renewing PPAs and bidding for new generation development opportunities. SWGen states that Proceeding No. 16A-0117E will affect those interests in particular because the flexible resource and wind integration studies included in the study will be used to inform economic analysis of bids in the Company's Electric Resource Plan (ERP).

36. WRA is a nonprofit conservation organization "dedicated to protecting the land, air and water of the West."⁶ WRA claims that the wind generation facilities proposed would deliver significant zero-carbon electricity to the grid in Colorado. WRA states that it supports Public Service's Rush Creek Wind Project Application and that Proceeding No. 16A-0117E will have a direct impact on its tangible interest in reducing the environmental effects of electricity generation.

37. RMELC/CBCTC notes that it was recently granted intervention status in Proceeding No. 16D-0168E, a precursor to Proceeding No. 16A-0117E. RMELC/CBCTC claims

⁵ Denver Motion to Intervene at ¶ 5.

⁶ WRA Petition for Leave to Intervene at 1.

that Proceeding No. 16A-0117E will have an impact on future resource planning proceedings where it intends to participate to advocate for its interest in labor and the environment.

38. CIEA is a non-profit corporation and trade association of IPPs with a mission to foster the competitive acquisition of cost-effective resources for the benefit of its members and Colorado ratepayers. CIEA states that it intends to understand and confirm the transmission line proposals made in the Rush Creek Wind Project Application and to ensure the propriety and effectiveness of the studies being reviewed in this proceeding that it expects will be integral to the ERP. CIEA further states that it intends to advocate for Commission decisions that safeguard competitive bidding of renewable resources and market participation of IPPs.

39. The Ratepayer Coalition is an unincorporated association of electricity consumers served by Public Service, comprised of individuals, businesses, and nonprofit associations.⁷ The Ratepayer Coalition seeks intervention “to obtain the most economical, reliable electricity that complies with state and federal law....”⁸ The Ratepayer Coalition also states that the project threatens multiple species of birds and bats. The Ratepayer Coalition states that its interests are not adequately represented in Proceeding No. 16A-0117E, specifically because it claims that Staff is statutorily charged with exploring and promoting alternative energy development and that the OCC “is charged by statute primarily with promoting an undefined ‘public interest’ and only secondarily with promoting the security and economic interest of ratepayers....”⁹

⁷ The Motion to Intervene filed by the Ratepayer Coalition on June 1, 2016 identifies the following members: Wells Trucking, Wells Ranch, Westlake Wine and Spirits, Auto Collision Specialists, Leanin’ Tree Cards, 88 Drive in Theater, Independence Real Estate Network, Kelsey Alexander, Lou Schroeder, Peg Brady, and Mary Dabman. An amended Motion to Intervene was filed by the Ratepayer Coalition on June 6, 2016 to include the Independence Institute and to remove Peg Brady as members.

⁸ Ratepayer Coalition Motion to Intervene at ¶ 4.

⁹ *Id.* at ¶ 1.

40. Sustainable Power opposes the Rush Creek Wind Project Application and requests intervention. Sustainable Power states that it is an IPP that owns or operates more than 150 utility and distributed electrical generation systems across the United States and the United Kingdom, and that it focuses on utility scale renewable energy projects. Sustainable Power argues that the Rush Creek Wind Project will reduce the opportunities that IPPs, including developers of qualifying facilities (QFs) such as sPower, will have to sell power to the Company. Sustainable Power further states that the Rush Creek Wind Project Application is a “significant issue” because it may detrimentally impact sPower’s ability to exercise its right under the federal Public Utilities Regulatory Policies Act (PURPA) to sell QF energy and capacity to the Company.

41. Within its Motion for Leave to Reply, Public Service states that it does not object to any of the petitions for intervention. However, the Company states that sPower raises issues beyond the scope of this proceeding. Specifically, Public Service claims that sPower’s objections regarding Commission rules implementing PURPA are beyond the scope of this proceeding.

b. Findings and Conclusions

42. Public Service, the applicant, is a party to Proceeding No. 16A-0117E.

43. Staff, the OCC, and CEO are each intervenors as of right and are each a party to Proceeding No. 16A-0117E.

44. We grant Invenergy leave to participate as *amicus curiae*, consistent with Rule 4 CCR 723-1-1200(c) of the Commission’s Rules of Practice and Procedure. Invenergy may provide legal argument within this proceeding; however, it is not a party and no arguments presented by Invenergy shall be considered evidence or included as part of the evidentiary record.

45. Rule 4 CCR 723-1-1401(c) states in relevant part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. ... The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene.

46. In addition, Rule 4 CCR 723-1-1401(c) requires additional discussion for certain motions representing ratepayer interests:

If a motion to permissively intervene is filed in a natural gas or electric proceeding by a residential consumer, agricultural consumer, or small business consumer, the motion must discuss whether the distinct interest of the consumer is either not adequately represented by the OCC or inconsistent with other classes of consumers represented by the OCC.

47. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., the OCC has a statutory mandate to represent the "public interest," and "to the extent consistent" with the public interest, interests of certain ratepayers. The Colorado Supreme Court stated that "if there is a party charged by law with representing his interest, then a compelling showing should be required to demonstrate why this representation is not adequate." *Feigen v. Alexa Group, Ltd.*, 19 P.3d 23, 26 (Colo. 2001).

48. Pursuant to Rule 4 CCR 723-1-1500, the person seeking leave to intervene by permission bears the burden of proof with respect to the relief sought.

49. Each of the entities seeking to intervene that does not represent residential consumer, agricultural consumer, or small business consumer interests has demonstrated that Proceeding No. 16A-0117E may substantially affect its pecuniary or tangible interests pursuant

to Rule 1401(c). Each also has demonstrated that its interests would not otherwise be adequately represented. Accordingly, we grant intervenor status to the Joint Cooperatives, Boulder, Tri-State, Climax/CF&I, Interwest, CEC, Denver, SWGen, WRA, RMELC/CBCTC, CIEA, and sPower.

50. With respect to the Ratepayer Coalition, we permit permissive intervention. While in this instance the OCC's stated reasons for its intervention as of right include many of same interests stated by the Ratepayer Coalition, it is within our discretion to allow the Ratepayer Coalition to intervene and to participate as a party. Ratepayer Coalition's motion meets the minimum requirements of Rule 1401(c). Among our considerations for granting the request, we note that no objection was filed to the Ratepayer Coalition's intervention. Ratepayer Coalition's inclusion in the proceeding as a party representing certain ratepayer interests will not unduly prejudice any other party to the proceeding or expand the scope of this proceeding. In this instance, we grant the Ratepayers Coalition's permissive intervention.

51. The Joint Cooperatives, Boulder, Tri-State, Climax/CF&I, Interwest, CEC, Denver, SWGen, WRA, RMELC/CBCTC, CIEA, sPower, and the Ratepayer Coalition are parties to Proceeding No. 16A-0117E.

52. We expect all participating parties to focus their arguments, as relevant, on the Rush Creek Wind Project Application at issue in Proceeding No. 16A-0117E. The parties are advised that we will not permit extraneous arguments beyond the scope of this proceeding. Parties also shall not use this proceeding to challenge final Commission decisions. *See* §§ 40-6-112(2), C.R.S. (“[i]n all collateral actions or proceedings, the decisions of the commission which have become final shall be conclusive.”).

53. We also find it prudent to balance the interests of multiple-party participation with administrative efficiency. Due to the expedited schedule anticipated in this proceeding and the number of parties permitted to intervene, parties should coordinate efforts, when feasible. We request parties make joint filings or indicate concurrence rather than making duplicative filings, when, for example, the Ratepayer Coalition's interests are aligned with those of the OCC.

2. Pawnee-Daniels Park Project Variance Petition

a. Discussion

54. The OCC filed an intervention of right in Proceeding No. 16V-0314E and requests a hearing. The OCC argues that the request to approve the Pawnee-Daniels Park Project Variance Petition is premature and is largely dependent on approval the Rush Creek Wind Project Application. The OCC also states that it is concerned with Public Service's statement that the Company has had multiple requests for interconnection for renewable energy generation that would require the use of the Pawnee-Daniels Park Project's facilities. The OCC claims that the Company has provided very little information about these multiple requests received for interconnection since 2013.

55. Staff also filed an intervention of right in Proceeding No. 16V-0314E and requests a hearing. Staff states that, on May 6, 2016, it requested that Public Service provide a construction schedule in support of the requested variance. Staff also expressed to the Company the need to understand the impact of the Rush Creek Wind Project and the associated generation tie transmission line to the Pawnee-Daniels Park transmission line. Staff alleges that the Company failed to produce the requested information requested and that the relationship between the Rush Creek Wind Project and associated generation tie transmission line to the Pawnee-Daniels Park still needs to be demonstrated by the Company.

56. CEC seeks to intervene in Proceeding No. 16V-0314E and requests a hearing. CEC argues that Public Service is asking the Commission “to depart from its thoughtful and balanced decision in Proceeding No. 14A-0287E by waiving the primary ratepayer protection embedded in the CPCN for the Project: namely, a construction date beginning not before 2020.”¹⁰ CEC contends that it has significant concerns with the Pawnee-Daniels Park Project Variance Petition, including the fact that the “need” described by the Company now is vastly different from the evidence of need that was provided in Proceeding No. 14A-0287E. CEC states that the Company’s “reliance on the incentive-driven Rush Creek Wind Project, which is not needed to serve load, as the basis to unwind the ratepayer protections embedded in the CPCN for the [Pawnee-Daniels Park] Project is particularly troubling for the Company’s captive customers, including CEC’s members.”¹¹

57. Interwest supports the petition and requests intervention for the opportunity to participate as a party in the event a hearing is scheduled.

b. Findings and Conclusions

58. Public Service, the petitioner, is a party to Proceeding No. 16V-0314E.

59. Staff and the OCC are each intervenors as of right and are each a party to Proceeding No. 16V-0314E.

60. We find that CEC and Interwest have each demonstrated that the Pawnee-Daniels Park Variance Petition may substantially affect its pecuniary or tangible interests pursuant to Rule 4 CCR 723-1-1401(c). Each also has demonstrated that its interests would not otherwise be adequately represented. We therefore grant intervenor status to Interwest and CEC.

¹⁰ CEC Petition to Intervene ¶10.

¹¹ *Id.* at ¶ 11.

61. Interwest and CEC are parties to Proceeding No. 16V-0314E.

G. OCC Motion to Consolidate Proceedings

62. The OCC argues that the consolidation of proceedings for the Rush Creek Wind Project Application and the Pawnee-Daniels Park Variance Petition is warranted, because the implementation of the Rush Creek Wind Project depends on the proposed modified construction schedule of the Pawnee-Daniels Park Project. The OCC also contends that consolidation will allow judicial economy and the elimination of potentially duplicative activity by the Commission and parties to the proceedings.

63. The OCC states that it conferred with Public Service regarding the consolidation of the two proceedings and that Public Service indicated that it would not oppose the OCC's Motion to Consolidate if, in the case of consolidation, supplemental testimony could be filed in Proceeding No. 16A-0117E.

64. Staff supports the Motion to Consolidate.

65. We find good cause to grant the Motion to Consolidate under Rule 4 CCR 723-1-1402. The issues in Proceeding Nos. 16A-0117E and 16V-0314E are substantially similar and the rights of the parties to both cases will not be prejudiced by consolidation. We agree with the OCC that the combination of the proceedings for a single hearing is more efficient for the Commission and the intervening parties. We also find that consolidation of the two cases will not impair our ability to render a decision on the Rush Creek Wind Project Application in accordance with the expedited procedures requested by Public Service.

66. Public Service, Staff, the OCC, CEO, the Joint Cooperatives, Boulder, Tri-State, Climax/CF&I, Interwest, CEC, Denver, SWGen, WRA, RMELC/CBCTC, CIEA, sPower, and

the Ratepayer Coalition are parties to this consolidated matter. Invenergy may participate as an *amicus curiae* in the consolidated cases.

H. Public Service Motion for Waivers from Certain ERP Rules

67. Public Service requests waivers from certain ERP Rules found at 4 CCR 723-3-3600, *et seq.* Public Service argues that it is necessary for the Commission to reconcile various inconsistencies between Rules 4 CCR 723-3-3611(e), 3612(e), and 3615(a)(II) and the filing requirements, procedures, and considerations for an application filed pursuant to Rule 4 CCR 723-3-3660(h) of the Commission's Renewable Energy Standard (RES) Rules.

68. Public Service explains that Rule 4 CCR 723-3-3611(e) requires a utility to file a CPCN application when it proposes within an ERP an "alternative method of resource acquisition" other than competitive bidding. Public Service states that it wanted to file the Rush Creek Wind Application as soon as possible and therefore the Company's requests for CPCNs for the Rush Creek Wind Project were not filed simultaneously with the Company's ERP.¹² Public Service further states that, given the time constraints and nature of the alternatives analysis the Company conducted for the requested CPCN for Rush Creek I and II, it was not feasible to quantify and to present the costs of alternatives in the form described in Rule 4 CCR 723-3-3611(e).

69. Public Service states that both Rules 4 CCR 723-3-3660(h)(V) and 3612(e) require an Independent Evaluator (IE) when a utility proposes a method of resource acquisition other than competitive bidding. Public Service states that the requirement of Rule 4 CCR 723-3-3612(e) is duplicative and unnecessary.

¹² Public Service filed its ERP on May 27, 2016 in Proceeding No. 16A-0396E.

70. With respect to Rule 3615(a)(II), Public Service argues that there is a timing issue, because the Company's ERP will not be decided until after the Commission renders a decision on the Rush Creek Wind Project Application.

71. Public Service states that, while the Commission generally has authority to waive its rules, § 40-2-124(1)(f)(I), C.R.S., and Rule 4 CCR 723-3-3660(h)(VI) expressly acknowledge the Commission's authority to waive any Commission rule, providing that nothing "shall prevent the Commission from waiving, repealing, or revising any Commission rule in a manner otherwise consistent with applicable law."

72. Staff, WRA, and the Joint Cooperatives do not object to the request.

73. The OCC filed no statement either supporting or opposing the requested waivers. However, in its intervention filing in Proceeding No. 16A-0117E, the OCC indicated that it wanted to investigate through discovery whether the waivers from the ERP Rules requested by Public Service should be approved.

74. Boulder states that it understands the benefit of resolving the Rush Creek Wind Application proceeding quickly. Nevertheless, Boulder states it is concerned that the project is being considered outside the parameters of an ERP.

75. CEC urges the Commission to reject the Company's requested waiver of Rule 4 CCR 723-3-3611(e) and instead require the Company to provide detailed estimates of the cost of the proposed facility and information on alternatives studied, costs for those alternatives, and explanation of the criteria used to rank or eliminate those alternatives. CEC argues that this detailed information as required by the rule is a necessary ratepayer protection, both because it would support the Company's position that the project "can be constructed at a reasonable cost

compared to the cost of similar eligible energy resources available in the market”¹³ and because it would provide additional basis for concluding that the rates that may ultimately result from the project are just and reasonable. CEC acknowledges the Public Service does not need to subject the project to competitive bidding; nevertheless, according to CEC, neither ratepayers nor the Commission can assess the merits of the project without a meaningful comparison of the available alternatives.

76. Sustainable Power also opposes the Company’s request for a waiver of Rule 4 CCR 723-3-3611(e). Sustainable Power argues that Public Service’s rule waiver requests disregard for Commission decisions implementing its ERP Rules, which, sPower contends, require a utility application filed pursuant to Rule 4 CCR 723-3-3660(h) to be filed in conjunction with an ERP. Sustainable Power further recommends that the Commission withhold ruling on the Company’s rule waiver requests at this time; according to sPower, the requested waivers “raise significant issues that should not be decided on the basis of comments provided in motions to intervene alone.”¹⁴

77. Sustainable Power agrees with CEC that, although such utility-owned generation may be exempt from competitive bidding requirements, the Commission needs reference points to understand whether the cost of a proposed resource is “reasonable,” taking into account how the proposed resource compares to other resources “available in the market.” Sustainable Power warns that the Commission will be ill equipped to evaluate the reasonableness of the Rush Creek Wind Project if it does so without a meaningful understanding of the cost of alternatives that are available in the market.

¹³ CEC Response at 3 (underscoring omitted).

¹⁴ Sustainable Power Motion to Intervene at ¶ 13.

78. We would have preferred that Public Service had proposed to develop and to own the Rush Creek Wind Project as part of its ERP in Proceeding No. 16A-0396E. However, as explained above, the circumstances surrounding the federal PTC support our consideration of the Rush Creek Wind Project in a separate proceeding on an expedited basis. Moreover, Public Service is permitted to file a separate application under Rule 4 CCR 723-3-3660(h).

79. CPCNs are required for Public Service to move forward with the Rush Creek Wind Project. However, we disagree with CEC and sPower that the same showings required for a CPCN submitted with an ERP pursuant to Rule 4 CCR 723-3-3611(e) are necessary pursuant to, and consistent with, Rule 4 CCR 723-3-3660(h). The standard Public Service must meet for the CPCNs requested in the Rush Creek Wind Project Application is whether the project “can be constructed at reasonable cost compared to the cost of similar eligible energy resources available in the market.” § 40-2-124(f)(1), C.R.S.; *see also* Rule 4 CCR 723-3-3660(h).

80. We grant Public Service a waiver from Rule 4 CCR 723-3-3611(e) and advise the Company that this waiver in no way reduces its burden to demonstrate that the costs of the Rush Creek Wind Project are reasonable as compared to alternative projects that are obtainable in the market.

81. No parties responded specifically to the request for waivers from Rules 4 CCR 723-3-3612(e) and 3615(a)(II). We agree with Staff that the ERP Rules and the RES Rules do not fit together perfectly and find good cause to grant these waivers as well.

I. Public Service Motion to Adopt Procedural Schedule

82. In its Procedural Motion, Public Service proposes filing deadlines that lead to an evidentiary hearing for September 7 through 9, 2016. The Company's proposed filing deadlines include July 15, 2016, for Answer Testimony and August 15, 2016, for Rebuttal Testimony.¹⁵ Final statements of position (SOPs) would be filed no later than September 19, 2016, to accommodate a final decision no later than November 10, 2016.

83. Boulder and the Joint Cooperatives state that they accept the procedural schedule proposed by Public Service.

84. Staff recommends that the deadline for filing Answer Testimony be revised to July 22, 2016, a week later than proposed by the Company. Staff argues that Public Service chose to file its application on May 13, 2016, while requesting an expedited review and Commission decision by November 10, 2016. The Company only proposes to provide Staff and other intervening parties until July 15, 2016, to conduct discovery, perform analysis, and prepare testimony. In light of the expedited nature of the proceeding, Staff recommends the Commission keep August 15, 2016, as the filing date for the Company's Rebuttal Testimony.

85. WRA argues that the procedural schedule proposed by Public Service will present significant hardship to it and likely many other parties due to multiple conflicts with the established procedural schedule in Proceeding No. 16AL-0048E, the Company's Phase II Electric Rate Case. WRA states, for example, that intervenors would be required to submit Answer Testimony in this proceeding on the same day that Cross-Answer Testimony is due in the rate case and that Cross-Answer Testimony and Rebuttal Testimony would be filed in the midst

¹⁵ Cross-Answer Testimony filed by intervening parties is typically due the same day as an applicant files Rebuttal Testimony.

of the rate case's evidentiary hearing. WRA states that, had Public Service allowed discovery to commence in early June, the Answer Testimony deadline would have to be moved up from July 15, 2016, to July 11, 2016, and the Cross-Answer Testimony and Rebuttal Testimony deadlines could have been changed from August 15, 2016, to August 8, 2016.

86. Sustainable Power opposes the Company's request to expedite this proceeding alleging that it would inflict prejudice to it and other competitive IPPs. Sustainable Power recommends that the Commission order Public Service to confer with the parties on a procedural schedule that is acceptable to all parties.

87. Sustainable Power also argues that Public Service's case for expediency, *i.e.*, to take advantage of the full value of the federal PTC for wind, is misleading and distracting. For instance, sPower argues that Public Service could meet the safe harbor for PTC qualification even if a final Commission decision is not issued by November 10, 2016, by purchasing substation equipment that the Company will need regardless of whether the Rush Creek Wind Project is eventually approved.

88. With respect to discovery, Public Service proposes a seven-day turnaround on discovery requests directed at the Rush Creek Wind Project Application filing and a five-day turnaround for discovery directed at Answer Testimony and Rebuttal Testimony. A cutoff on discovery service would fall on August 29, 2016, and responses would be provided to all requests no later than September 1, 2016.

89. Staff does not oppose the Company's proposals for discovery response times and cut-offs.

90. WRA also does not oppose the accelerated discovery deadlines proposed by Public Service. However, WRA requests the Commission provide additional guidance

concerning discovery procedures. Specifically, WRA requests the Commission require the following: (1) if a party will be unable to respond to a discovery response by the Commission-established deadline, counsel for the responding party shall confer with counsel for the requesting party, in writing, no later than the due date; (2) as part of this conferral, counsel for the responding party shall state the reason for the delay in responding to the discovery request and the anticipated date of production; and (3) if a discovery response is more than three days late, the responding party must file a Motion with the Commission seeking leave to deviate from the Commission's established procedural schedule. (This requirement may be waived upon consent of the requesting party.)

91. In response to WRA's suggestions regarding discovery, Public Service proposes that the Commission adopt an expedited process to address motions to compel. Specifically, the Company proposes that the Commission require responses to any motions to compel to be filed within five business days. Public Service also states that, in this proceeding, the Company is willing to respond to any motions to compel within three business days. Public Service states that, upon conferral, WRA has agreed to this proposal in lieu of its recommendations described above, so long as the Company agrees to confer with a party if an extension of time to respond to discovery request(s) is necessary.

92. We agree that additional time should be afforded to the intervening parties in light of the start date of discovery in this matter and that the deadline for the filing of Answer Testimony should be extended by at least a week from the date proposed by Public Service. We also seek to modify filing deadlines as to avoid filing deadlines in other ongoing proceedings. Therefore, we adopt the following filing deadlines and discovery procedures.

- 1) Discovery shall be conducted in accordance with Rule 4 CCR 723-1-1405 unless modified by this Decision.

- 2) Discovery shall commence for all parties no later than the effective date of this Decision.
- 3) Responses to discovery directed at Public Service shall be provided within seven days.
- 4) Answer Testimony shall be filed no later than July 27, 2016.
- 5) Responses to discovery requests directed at Answer Testimony shall be provided within five days.
- 6) Rebuttal Testimony and Cross-Answer Testimony shall be filed no later than August 22, 2016.
- 7) Responses to discovery requests directed at Answer Testimony shall be provided within three days.
- 8) Discovery service shall terminate on August 29, 2016.
- 9) Responses shall be provided to all outstanding discovery requests no later than September 1, 2016.

Final SOPs shall be filed no later than September 19, 2016.

93. We will adopt the expedited procedures for motions to compel offered by Public Service and accepted by WRA. Responses from an intervening party to any motion to compel directed at the intervening party shall be filed within five business days. Responses from Public Service to any motion to compel directed at the Company shall be filed within three business days. We are concerned about the alleged delays in discovery responses in other proceedings and advise Public Service that motions to compel directed at the Company may put the September hearing dates in jeopardy and could cause a delay in our rendering of a final decision.

94. We scheduled the three-day evidentiary hearing from September 7, 2016, through September 9, 2016, prior to the filing of most of the requests for intervention, the filing of OCC's Motion to Consolidate, and the filing of the responses to Public Service's Procedural Motion. In light of the large number of parties to these consolidated cases and the potential amount of testimony that may be provided with respect to both the Rush Creek Wind Application and the Pawnee-Daniels Park Variance Petition, it is necessary to schedule a prehearing conference prior

to the first day of hearings to ensure an efficient and fair process. For the same reasons, we also find it necessary to set a deadline for the filing of prehearing motions, such as dispositive motions, motions to strike testimony, and motions to approve stipulations and settlement agreements.

95. All prehearing motions shall be filed no later than August 29, 2016. Responses to prehearing motions shall be filed no later than September 1, 2016.¹⁶

96. A prehearing conference shall be scheduled for September 2, 2016. Public Service shall confer with the parties to develop an exhibit list and an order of witnesses with estimated cross-examination times for presentation at the prehearing conference.

J. Public Service Motion for Protective Order

97. Public Service requests restricted access to certain documents and information, including: (1) commercial contracts and terms, including but not limited to pricing, that is highly sensitive to both Public Service and the vendors that Public Service is transacting with to develop the Rush Creek Wind Project; (2) the Company's Balance of Plant estimates for work used to obtain future bids; and (3) any land rights acquisition costs and estimates. Public Service requests that the Commission provide extraordinary protection for this information, and order that it be treated as highly confidential.

98. Public Service proposes limiting access to the information claimed to be highly confidential to the Commission, Commission Staff, the OCC, and their counsel, as well as counsel and certain subject matter experts (SMEs) for intervenors, with the exception of intervenors that are "developers of energy resources, including potential bidders into Public

¹⁶ Due to these tight deadlines, we recognize that it may be necessary to afford parties an opportunity to provide oral argument on prehearing motions at the prehearing conference.

Service’s upcoming ERP proceeding, and any competitive power producers, existing or potential wholesale customers of developers of energy resources, and any trade organization or other association representing any of the foregoing entities would not have access to the highly confidential information.”¹⁷ Counsel and the SMEs for eligible intervenors would be required to execute the highly confidential non-disclosure agreements (NDAs) in the form of the attachment to the Company’s Motion for Protective Order.

99. Public Service states that the level of highly confidential protection sought here, *i.e.*, denying access to competitors and their trade associations, was previously ordered in the Company’s Clean Air – Clean Jobs Act (CACJA) proceeding, Proceeding No. 10M-245E. Public Service states that, in the CACJA proceeding, the Commission entered a protective order denying competitors and their trade organizations—including CIEA—access to competitively sensitive bids provided to Public Service in response to a competitive solicitation.

100. In response, CIEA argues that, as a trade organization, it “nearly exclusively, is to be excluded from reviewing the highly confidential information”¹⁸ and that this preclusion is not appropriate. CIEA states that its counsel and SMEs do not share highly confidential information received among its members. CIEA claims that the Commission’s confidentiality rules adequately protect this type of information from public disclosure, similar to ERP proceedings, competitive solicitations, and other proceedings with commercially sensitive information. CIEA requests that its counsel and SMEs who sign appropriate NDAs be allowed the same access as all other parties to the case who are not themselves competitors of Public Service.

¹⁷ Public Service Motion for Protective Order at ¶ 5c.

¹⁸ CIEA Motion to Intervene at ¶ 14.

101. We grant the Motion for Protective Order, in part. The information Public Service claims to be highly confidential will be protected as such. However, access to this information will be governed by the same disclosure procedures used for ERP proceedings pursuant to Rule 4 CCR 723-3-3614. The information claimed to be highly confidential will be restricted to parties' counsel and SMEs who have signed the necessary NDAs, attesting that they must not only follow the Commission's protective provisions and that the information shall not be used or disclosed for purposes of business or competition, or for any purposes other than for purposes of this proceeding. The Commission, Commission Staff, the OCC, and their counsel also will have access to the information, consistent with Public Service's request.

102. We will follow the established provisions in the ERP Rules because they will serve to provide us with potentially better information and argument with respect to whether the Rush Creek Wind Project "can be constructed at reasonable cost compared to the cost of similar eligible energy resources available in the market." § 40-2-124(f)(1), C.R.S. At that same time, these provisions will maintain the necessary protections of the information, consistent with legislative changes and ERP Rules enacted after the CACJA. Competitive use of the information will be prohibited just as in an ERP proceeding.

K. Staff Motion to Strike the "Extra Profit" Issue from Proceeding

103. In its Notice of Intervention of Right and Request for Hearing filed on May 17, 2016, in Proceeding No. 16A-0117E, Staff included a preliminary response to the Company's Procedural Motion, suggesting that some of Public Service's requested approvals are more expansive than necessary or appropriate for the Commission to consider in an expedited proceeding. For example, Staff stated that it is concerned that the Company is requesting the Commission to establish a baseline of how the net economic benefits (NEBs) from the proposed

Rush Creek Wind Project will be calculated for future filings pursuant to § 40-2-124(1)(f)(II), C.R.S., and Rule 4 CCR 723-3-3660(g).

104. In its full response to Public Service's Procedural Motion, Staff requests that the Commission summarily reject Public Service's request that the Commission establish a baseline and methodology to be used in the future to determine the potential level of NEBs. Staff argues that the Company's proposal is untenable, because it is contrary to the clear and straightforward definition of NEBs set forth in Rule 4 CCR 723-3-3660(g). Staff requests that the Commission state that the Company's proposal is outside the scope of this proceeding and, for clarity of the record, and to order all portions of the application and testimony that pertain to this NEB proposal be stricken.

105. WRA agrees with Staff's suggestion, arguing that the establishment of an NEB baseline in this proceeding is beyond the necessary scope of the expedited proceeding. WRA suggests that reserving this issue for a future proceeding will streamline this proceeding and ensure the Commission can meet the Company's requested expedited schedule. WRA argues that this "extra profit" issue is nonetheless important, because it could have a significant impact on the Company's Renewable Energy Standard Adjustment (RESA) and hence the availability of RESA funds to support future additional renewable resource acquisitions. According to WRA, a future proceeding on this issue will ensure the Commission and stakeholders have sufficient time, attention, and resources to give the issue.

106. More generally, CEC suggests that the Commission should narrowly tailor the scope of this proceeding to enable as thorough and focused a review, investigation, and analysis of the Rush Creek Wind Project in the timeframe allotted.

107. In its reply to WRA and Staff, Public Service states that it has no objection to the suggestions of Staff and WRA that the NEBs issue be considered separately in order to streamline this proceeding. However, the Company states that it does not waive its statutory right to pursue “extra profits” and will file a follow-on application immediately after this proceeding and request that the Commission take administrative notice of the record in this proceeding, assuming the Commission approves the Rush Creek Wind Project. Public Service argues that the use of a follow-on application to adjudicate the “extra profit” issue is consistent with Rule 4 CCR 723-3-3660(g)(I).

108. We accept Public Service’s offer to remove the consideration of a baseline and methodology for determining NEBs in this proceeding. We agree with Staff and WRA that this action will help streamline this proceeding given its expedited timeline. We direct Public Service to file an amended application and modified Direct Testimony that conforms to the Company’s offer to withdraw the “extra profit” issue from this proceeding. The amended application and modified testimony shall be filed no later than 21 days following the effective date of this Decision.

L. Extension of Decision Deadline

109. Pursuant to § 40-6-109.5, C.R.S., a final decision in this matter must issue no later than October 6, 2016, or 120 days following the date the Rush Creek Wind Project Application was deemed complete, unless that deadline is extended by a separate decision.

110. The procedural schedule we have adopted will enable us to enter a final decision before November 10, 2016, as requested by the Company. However, the October 6, 2016 statutory deadline will not likely be met, since the evidentiary hearings will be held in September.

111. Accordingly, we find good cause to extend the deadline for a final decision another 90 days pursuant to § 40-6-109.5, C.R.S. The 210-day statutory deadline is January 4, 2017.

II. ORDER

A. It Is Ordered That:

1. The Petition for a Variance of the Construction Schedule for the Pawnee to Daniels Park 345 kV Transmission Project (Pawnee-Daniels Park Project) filed by Public Service Company of Colorado (Public Service) on April 29, 2016 in Proceeding No. 16V-0314E is set for hearing before the Commission *en banc*.

2. The Motion to Consolidate filed by the Colorado Office of Consumer Counsel (OCC) on May 18, 2016 in Proceeding Nos. 16V-0314E and 16A-0117E is granted, consistent with the discussion above.

3. Proceeding No. 16A-0117E with respect to the Application for Approval of the Rush Creek Wind Project Pursuant to Rule 3660(h) and a Certificate of Public Convenience and Necessity for the 345 kV Rush Creek to Missile Site Generation Tie Transmission Line filed by Public Service on May 13, 2016 is consolidated with Proceeding No. 16V-0314E. Proceeding No. 16A-0117E shall serve as the primary proceeding.

4. Public Service shall file supplemental Direct Testimony addressing the Pawnee-Daniels Park Project no later than 21 days following the effective date of this Decision, consistent with the discussion above.

5. Staff of the Colorado Public Utilities Commission is a party in this consolidated matter.

6. The OCC is a party in this consolidated matter.

7. The Colorado Energy Office is a party in this consolidated matter.
8. The Petition to Intervene filed by the Colorado Energy Consumers (CEC) on May 20, 2016 in Proceeding No. 16V-0314E is granted.
9. The Motion to Intervene filed by CEC on June 1, 2016 in Proceeding No. 16A-0117E is granted.
10. CEC is a party in this consolidated matter.
11. The Petition to Intervene filed by the Interwest Energy Alliance (Interwest) on May 31, 2016 in Proceeding No. 16A-0117E is granted.
12. The Petition to Intervene filed by Interwest on May 31, 2016 in Proceeding No. 16V-0314E is granted.
13. Interwest is a party in this consolidated matter.
14. The Motion to Intervene filed jointly by Holy Cross Electric Association, Inc.; Yampa Valley Electric Association, Inc.; Intermountain Rural Electric Association; and Grand Valley Rural Power Lines, Inc. (the Joint Cooperatives) on May 23, 2016 in Proceeding No. 16A-0117E is granted. The Joint Cooperatives are a party in this consolidated matter.
15. The Motion for Leave to Intervene filed by the City of Boulder (Boulder) on May 27, 2016 in Proceeding No. 16A-0117E is granted. Boulder is a party in this consolidated matter.
16. The Motion to Intervene filed by Tri-State Generation and Transmission Association, Inc. (Tri-State) on May 27, 2016 in Proceeding No. 16A-0117E is granted. Tri-State is a party in this consolidated matter.

17. The Petition to Intervene filed by Climax Molybdenum Company (Climax) and CF&I Steel L.P. (CF&I) on May 31, 2016 in Proceeding No. 16A-0117E is granted. Climax and CF&I are parties in this consolidated matter.

18. The Motion to Intervene filed by the Colorado Independent Energy Association (CIEA) on June 1, 2016 in Proceeding No. 16A-0117E is granted. CIEA is a party in this consolidated matter.

19. The Motion to Intervene filed by Wells Trucking, Wells Ranch, Westlake Wine and Spirits, Auto Collision Specialists, Leanin' Tree Cards, 88 Drive in Theater, Independence Real Estate Network, Kelsey Alexander, Lou Schroeder, Peg Brady, and Mary Dabman (Ratepayer Coalition) on June 1, 2016, as amended on June 6, 2016 to include the Independence Institute and to remove Peg Brady, is granted, consistent with the discussion above. The Ratepayer Coalition is a party in this consolidated matter.

20. The Motion to Intervene filed by the City and County of Denver (Denver) on June 1, 2016 in Proceeding No. 16A-0117E is granted. Denver is a party in this consolidated matter.

21. The Petition for Leave to Intervene filed jointly by the Rocky Mountain Environmental Labor Coalition (RMELC) and Colorado Building and Construction Trades Council, and ALF-CIO (CBCTC) on June 1, 2016 in Proceeding No. 16A-0117E is granted. RMELC and CBCTC are parties in this consolidated matter.

22. The Motion to Intervene filed by Sustainable Power Group, Inc. (Sustainable Power) on June 1, 2016, in Proceeding No. 16A-0117E is granted, consistent with the discussion above. Sustainable Power is a party in this consolidated matter.

23. The Petition for Leave to Intervene filed by Southwest Generation Operating Company, LLC (SWGen) on June 1, 2016 in Proceeding No. 16A-0117E is granted. SWGen is a party in this consolidated matter.

24. The Petition for Leave to Intervene filed by Western Resource Advocates (WRA) on June 1, 2016 in Proceeding No. 16A-0117E is granted. WRA is a party in this consolidated matter.

25. The Petition to Participate as *Amicus Curiae* filed by Invenergy Wind Development North America LLC (Invenergy) on June 1, 2016 in Proceeding No. 16A-0117E is granted. Invenergy may participate as *amicus curiae* in the consolidated cases.

26. The Motions to Adopt Procedural Schedule, to Expedite Review of the Application, and Requesting Waivers filed by Public Service on May 13, 2016 in Proceeding No. 16A-0117E are granted, with modifications, consistent with the discussion above.

27. Answer Testimony shall be filed no later than July 27, 2016.

28. Rebuttal Testimony and Cross-Answer Testimony shall be filed no later than August 22, 2016.

29. All prehearing motions, including, but not limited to, dispositive motions, motions to strike testimony, and motions to approve stipulations and settlement agreements, shall be filed no later than August 29, 2016.

30. Responses to prehearing motions shall be filed no later than September 1, 2016, consistent with the discussion above.

31. A prehearing conference is scheduled in this matter as follows:

DATE: September 2, 2016

TIME: 10:00 a.m. to 12:00 p.m.

PLACE: Hearing Room
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

32. Hearings in this matter shall be scheduled on September 7 through 9, 2016, consistent with Decision No. C16-0423-I, issued May 19, 2016 in Proceeding No. 16A-0117E.

33. Final post-hearing statements of position shall be filed no later than September 19, 2016.

34. Discovery shall commence for all parties no later than the effective date of this Decision. Discovery shall be conducted in accordance with 4 *Code of Colorado Regulations* (CCR) 723-1-1405 unless modified by this Decision, consistent with the discussion above. Responses to discovery directed at the Application and Direct Testimony shall be provided within seven days. Responses to discovery directed at Answer Testimony shall be provided within five days. Responses to discovery directed at Rebuttal Testimony and Cross-Answer Testimony shall be provided within three days. The cutoff date for discovery service shall be August 29, 2016, and responses to all outstanding discovery requests shall be provided no later September 1, 2016.

35. Consistent with the discussion above, responses from an intervening party to any motion to compel directed at the intervening party shall be filed within five business days. Responses from Public Service to any motion to compel directed at Public Service shall be filed within three business days.

36. Public Service shall file an amended application and amended Direct Testimony to remove its request for the Commission to establish a baseline and methodology to determine the potential level of net economic benefits for a potential future request under 4 CCR 723-3-3660(g), consistent with the discussion above. The amended application and revised testimony shall be filed no later than 21 days following the effective date of this Decision.

37. The Motion for Protective Order filed by Public Service on May 13, 2016 in Proceeding No. 16A-0117E is granted, in part, consistent with the discussion above. Public Service shall file a modified Non-Disclosure Agreement consistent with this Decision no later than five days following the effective date of this Decision.

38. The Motion for Leave to Reply to Response Pleadings of WRA and Staff filed by Public Service on June 8, 2016 in Proceeding No. 16A-0117E is granted.

39. Notwithstanding the adoption of a procedural schedule to allow for the issuance of a final decision in this matter no later than November 10, 2016, the deadline for a Commission decision on the application filed in Proceeding No. 16A-0117E is extended by an additional 90 days pursuant to § 40-6-109.5, C.R.S., to January 4, 2017.

40. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 15, 2016.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

GLENN A. VAAD

FRANCES A. KONCILJA

Commissioners