

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16A-0055E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS SOLAR*CONNECT PROGRAM.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
EXTENDING TIME FOR COMMISSION DECISION
PURSUANT TO § 40-6-109.5(4), C.R.S.; RULING ON
MOTIONS; SCHEDULING EVIDENTIARY HEARING;
ESTABLISHING PROCEDURAL SCHEDULE;
ADDRESSING DISCOVERY; SHORTENING RESPONSE
TIME TO DISCOVERY-RELATED MOTIONS;
ADDRESSING ADDITIONAL MATTERS; AND
WAIVING RESPONSE TIME**

Mailed Date: April 12, 2016

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I. STATEMENT

1. The procedural history of this Proceeding is set out in a previously-issued Interim Decision. The procedural history is repeated here as necessary to put the instant Interim Decision in context.

2. On January 27, 2016, Public Service Company of Colorado (Public Service, PSCo, or Company), filed a Verified Application for Approval of its Solar*Connect Program (Application). Accompanying the Application are the direct testimony and attachments of four witnesses in support of the Application.¹

3. On January 27, 2016, Public Service filed a Motion for Approval to Issue Targeted Request for Proposals to Acquire Generation Resources to Support the Solar*Connect Program. This filing is discussed below.

4. On January 28, 2016, the Commission issued its Notice of Application Filed (Notice) in this Proceeding. That Notice established an intervention period, which has expired.

5. The following intervened as of right or were granted permission to intervene: City of Boulder (Boulder); Colorado Energy Office (CEO); Colorado Independent Energy

¹ The Company filed the Direct Testimony and Attachments of Alice K. Jackson, of James F. Hill, of Kevin D. Schwain, and of Steven W. Wishart. Some attachments are filed under seal as confidential information.

Association (CIEA); Colorado Office of Consumer Counsel (OCC); Colorado Solar Energy Industries Association (COSEIA); Energy Freedom Coalition of America (EFCA); Interwest Energy Alliance (Interwest); Litigation Staff of the Commission (Staff); NextEra Energy Resources, LLC (NextEra); Solar Energy Industries Association, Inc. (SEIA); SunShare LLC (SunShare); Vote Solar; and Western Resource Advocates (WRA).

6. On March 9, 2016, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition.

7. On March 21, 2016, by Decision No. R16-0234-I, the ALJ scheduled a prehearing conference in this Proceeding. In that Interim Decision, the ALJ identified the issues to be addressed at the prehearing conference.

8. On March 31, 2016, the ALJ held the prehearing conference as scheduled.²

A. Extension of Time for Commission Decision.

9. When it filed the Application, the Company filed its direct testimony and attachments in support of the Application. Absent an order enlarging the time for Commission decision, § 40-6-109.5(1), C.R.S., provides that the Commission decision in this matter should issue within 120 days of the date on which the Application is deemed complete.

10. On March 9, 2016, by Minute Order, the Commission deemed the Application complete as of that date.

11. Pursuant to § 40-6-109.5(1), C.R.S., by Decision No. R16-0234-I, the ALJ extended the time for Commission decision in this Proceeding an additional 90 days (*i.e.*, to and including October 5, 2016).

² A transcript of the prehearing conference has been ordered.

12. Section 40-6-109.5(4), C.R.S., permits the Commission to extend the time for Commission decision an additional 90 days “under extraordinary circumstances and after notice and a hearing at which the existence of such conditions is established[.]” At the prehearing conference, Public Service waived the § 40-6-109.5(4), C.R.S., hearing.

13. Given the novel questions presented and the number of Parties in this case (among other reasons), the ALJ finds that extraordinary circumstances exist and that those circumstances warrant extending the time for Commission decision an additional 90 days beyond October 5, 2016. The time for Commission decision in this Proceeding will be extended to **January 3, 2017.**

B. Rulings.

14. Before and during the March 31, 2016 prehearing conference, the ALJ made a number of rulings. This Interim Decision memorializes the rulings.

1. Request to be Excused from Prehearing Conference; Parties not Participating in Prehearing Conference.

15. On March 30, 2016, Interwest filed a Request to be Excused from Prehearing Conference (Interwest Request). Given the nature of the relief sought and given that no party will be prejudiced, the ALJ will waive response time and will grant the Interwest Request. Interwest will be excused from participating in the March 31, 2016 prehearing conference.³

16. On March 30, 2016, CIEA filed a Notice of Intent Not to Participate at Prehearing Conference. The ALJ notes this filing.

17. On March 30, 2016, NextEra filed a Notice of Intent Not to Participate at Prehearing Conference. The ALJ notes this filing.

³ On March 30, 2016, by electronic mail correspondence, the ALJ notified the Parties of this ruling.

18. In their filings, CIEA, Interwest, and NextEra state that they accept the scheduling and other procedural rulings made during the prehearing conference. In addition, Decision No. R16-0234-I at Ordering Paragraph No. 29 states:

A party's failure to attend or to participate in the prehearing conference is a waiver of objection to the rulings made during the prehearing conference, the procedural schedule established as a result of the prehearing conference, the prehearing conference date scheduled as a result of the prehearing conference, and the hearing dates scheduled as a result of the prehearing conference.

For these reasons, CIEA, Interwest, and NextEra are held to the rulings made during the prehearing conference.

2. Motions for Late Intervention.

19. On March 21, 2016, Sam's West, Inc. (Sam's West), filed a Motion for Late Intervention (Sam's West Motion). In that filing, Sam's West states good cause for the late filing. In addition, Sam's West establishes that this Proceeding may substantially affect its pecuniary or tangible interests; that its interests are not otherwise adequately represented; and that its participation will not broaden the issues in this case. The Sam's West Motion is unopposed. Sam's West has met the requirements for intervention by permission set out in Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1401(c).⁴ See generally Decision No. R16-0234-I at ¶ 14 (discussion of standard for intervention by permission). The ALJ will grant the Sam's West Motion and will permit Sam's West to intervene. Sam's West is an Intervenor and a Party.

20. On March 21, 2016, Wal-Mart Stores, Inc., filed a Motion for Late Intervention (Wal-Mart Motion). In that filing, Wal-Mart states good cause for the late filing. In addition, Wal-Mart establishes that this Proceeding may substantially affect its pecuniary or tangible interests; that its interests are not otherwise adequately represented; and that its participation will

⁴ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

not broaden the issues in this case. The Wal-Mart Motion is unopposed. Wal-Mart has met the requirements for intervention by permission set out in Rule 4 CCR 723-1-1401(c). *See generally* Decision No. R16-0234-I at ¶ 14 (discussion of standard for intervention by permission). The ALJ will grant the Wal-Mart Motion and will permit Wal-Mart to intervene. Wal-Mart is an Intervenor and a Party.

21. Boulder, CEO, CIEA, COSEIA, EFCA, Interwest, NextEra, OCC, SEIA, Staff, SunShare, Vote Solar, Wal-Mart,⁵ and WRA, collectively, are the Intervenors; each individually is an Intervenor. The Company and the Intervenors, collectively, are the Parties; each individually is a Party. Each Party is represented by legal counsel in this Proceeding.

22. At the March 31, 2016 prehearing conference (except as noted above), the Parties were present; were represented; and participated.

3. Motion to Appear *Pro Hac Vice*.

23. An attorney who is not licensed to practice law in Colorado (out-of-state attorney) must be granted permission to appear *pro hac vice* in this Proceeding. Rule 4 CCR 723-1-1201(a) governs the admission of out-of-state attorneys. Rule 4 CCR 723-1-1201(a) requires compliance with Colorado Rule of Civil Procedure (Colo.R.Civ.P.) 205.4. Colo.R.Civ.P. 205.4 incorporates the requirements of Colo.R.Civ.P. 205.3.

24. As pertinent here, Colo.R.Civ.P. 205.3(2)(a) details what an out-of-state attorney must do to be permitted to appear *pro hac vice* and includes these requirements:

- (i) File a verified motion with the [administrative agency] requesting permission to appear;
- (ii) Designate an associate attorney who is admitted and licensed to practice law in Colorado;

⁵ Unless the context indicates otherwise, reference in this Interim Decision to Wal-Mart is a reference to both Sam's West, Inc., and Wal-Mart Stores, Inc.

- (iii) File a copy of the verified motion with the Clerk of the Supreme Court Office of Attorney Registration at the same time the verified motion is filed with the [administrative agency];
- (iv) Pay the required fee to the Clerk of the Supreme Court collected by the Office of Attorney Registration; and
- (v) Obtain permission from the [administrative agency] for such appearance.

25. On March 25, 2016, Kelly A. Williams, Esquire, filed in this Proceeding a Verified Motion to Appear *Pro Hac Vice* on Behalf of Wal-Mart Stores, Inc. and Sam's West, Inc. (Williams Motion).

26. On March 30, 2016, the Commission received from the Attorney Registration Office of the Supreme Court of Colorado a notice that informed the Commission that Ms. Williams has been assigned a *pro hac vice* registration number for this Proceeding. The notice states that the final decision with respect to Ms. Williams's admission *pro hac vice* in this Proceeding lies with the Commission.

27. The ALJ has reviewed the Williams Motion, the Attorney Registration Office notice, and the requirements of Colo.R.Civ.P. 205.3. The ALJ finds that Ms. Williams has complied with Rule 4 CCR 723-1-1201(a) and Colo.R.Civ.P. 205.4 (and the incorporated Colo.R.Civ.P. 205.3), that the Williams Motion states good cause, and that no party will be prejudiced if the Williams Motion is granted. In addition, the Williams Motion is unopposed. The ALJ will grant the motion and will permit Ms. Williams to appear *pro hac vice* to represent Wal-Mart in this Proceeding.

28. **Kelly A. Williams, Esquire, is advised and is on notice that** she will be held to Colo.R.Civ.P. 205.3(7) as incorporated by reference into Colo.R.Civ.P. 205.4 and to the acknowledgements contained in the verified Williams Motion.

29. Lisa V. Perry, Esquire, represents Wal-Mart in this Proceeding. She is the licensed Colorado attorney with whom Ms. Williams is associated for purposes of Ms. Williams's *pro hac vice* representation of Wal-Mart.

30. **Lisa V. Perry, Esquire, is advised and is on notice that** she will be held to Colo.R.Civ.P. 205.3(3) as incorporated by reference into Colo.R.Civ.P. 205.5.

4. Public Service Motion for Approval to Issue Targeted Request for Proposals.

31. On January 27, 2016, Applicant filed a Motion for Approval to Issue Targeted Request for Proposals to Acquire Generation Resource to Support the Solar*Connect Program (PSCo Motion). By Decision No. R16-0234-I, the ALJ established the time within which Intervenors were to file their response to the motion. Staff filed a response in support of the motion, subject to a clarification condition. COSEIA, EFCA, SunShare, and Vote Solar filed responses in opposition to the motion.

32. For the reasons discussed below, the ALJ will deny the PSCo Motion.

33. Public Service seeks this relief: (a) authorization immediately to issue a Solar*Connect-specific Request for Proposals (RFP); and (b) waiver of the Electric Resource Planning (ERP) Rules⁶ insofar as necessary to allow the Company to acquire the Solar*Connect Program resources outside the ERP process.

34. By the PSCo Motion, Public Service seeks authorization immediately

to issue a targeted [RFP] to acquire energy and capacity associated with one or more photovoltaic solar ("PV") generation project(s) with a total output rating of up to 50 MW (AC) for the Company's proposed Solar*Connect Program.

⁶ These Rules are found in the Rules Regulating Electric Utilities, Part 3 of 4 *Code of Colorado Regulations* 723. Specifically, the ERP Rules are Rules 4 CCR 723-3-3600 through and including 723-3-3619.

PSCo Motion at 1. Public Service asks “that the Commission complete its review, processing, and determination of this Motion at the outset of this proceeding, so that the RFP and acquisition process can proceed in parallel with the consideration of” the Application. *Id.*

35. As good cause for granting the motion for authorization immediately to issue a Solar*Connect RFP, Public Service states: (a) in the Application, PSCo seeks authorization for Solar*Connect, a new program; (b) PSCo’s customers have expressed an interest in this type of solar program, and PSCo wishes to offer the program as soon as possible in response to that customer interest; (c) to provide the energy and capacity for the proposed 50 MW Solar*Connect program, PSCo seeks “to purchase the full electrical output of [one or more new PV generation facilities chosen from the RFP responses] pursuant to one or more power purchase agreements (‘PPAs’) with terms of no less than twenty (20) years and no more than twenty-five (25) years” (PSCo Motion at 2); (d) PSCo seeks authorization to issue the RFP as soon as possible in order to “accelerate the time frame by which [the Company] may offer Solar*Connect to [its] customers by several months” (Direct Testimony of James F. Hill at 12:17-18) and, possibly, to allow the Company to “report back to the Commission on the RFP results prior to the conclusion of” this Proceeding (*id.* at 12:20-21); and (e) if the PSCo Motion is granted, the Commission “will not be forfeiting its ability to ultimately decide the issues in this proceeding [because] the RFP specifically states that it is subject to the Commission’s rulings in this case” (PSCo Motion at 3). In addition, if the PSCo Waiver is granted and the targeted Solar*Connect RFP is issued, Public Service represents that it

will not enter into the PPAs until after the Commission approves the Solar*Connect program. The Company will file a report with the Commission reporting the results of the RFP in this proceeding while the Company’s Solar*Connect program is being reviewed.

PSCo Motion at 3.

36. Public Service also requests a waiver of “any requirement that [the Solar*Connect] acquisition be included in a Commission-approved [ERP], under the Commission’s ERP Rules” (PSCo Motion at 4). As support for and good cause to grant this waiver request, Public Service states that the Commission has recognized “the Company’s ability to obtain waivers of the ERP rules if the circumstances warrant.” PSCo Motion at 4, citing Decision No. C13-0094.⁷

37. As noted above, Staff supports the PSCo Motion conditioned on a clarification. As the PSCo Motion is denied, the ALJ does not discuss Staff’s response, which focuses on the clarification.

38. COSEIA, EFCA, and SunShare filed a joint response in opposition to the motion (Joint Response). Vote Solar filed a response in opposition to the motion (Vote Solar Response). For convenience, the reasons for the oppositions are consolidated.

39. The principal arguments raised in opposition to the PSCo Motion are: (a) the Solar*Connect program is a new business model, and Public Service intends to make that program part of its regulated business; (b) the Commission should not rush the significant decision to approve the Solar*Connect program, a decision that must “ensure that the design, mechanics and size of the program, including the RFP and model energy contracts, do not provide [the Company] with any unfair advantages compared to existing programs” (Joint Response at ¶ 9); (c) the Company has failed to establish the existence of any harm to customers if issuance of an RFP follows the normal course (*i.e.*, decision on

⁷ That Commission Decision was issued on January 24, 2013 in Proceedings No. 11A-869E, No. 12A-782E, and No. 12A-785E.

whether to authorize the Solar*Connect program; if the program is authorized, decision on the program's design, size, and mechanics; and, finally, decision on an RFP and Model Solar Energy Purchase Agreement in the context of the approved program); (d) permitting PSCo to issue the RFP and to review the responsive bids may result in the Company's incurring expenses that it may seek to recover from ratepayers, even if the Commission does not approve the Solar*Connect program; (e) "issuing the RFP now will require bidders to expend significant money and effort on an RFP that might not lead to any projects being built" (Joint Response at ¶ 16); (f) the Company requests a waiver of any requirement that the Solar*Connect RFP be included in a Commission-approved ERP, and such an "important issue merits further investigation in the context of evaluating PSCo's Application as a whole and parties should be afforded an opportunity to address it through discovery, testimony, and the hearing" (Vote Solar Response at ¶ 6).

40. For the following reasons, the PSCo Motion will be denied.

41. *First*, as the movant, Public Service bears the burden of proof with respect to the relief sought in the PSCo Motion. The Company offers one basis for the relief sought in the PSCo Motion: customers have expressed an interest in this type of renewable energy program; and, in response to that customer interest, the Company wants to provide Solar*Connect as soon as possible. The ALJ finds this unpersuasive, especially in view of the persuasive reasons stated in opposition to the PSCo Motion. The ALJ finds that Public Service has not met its burden of proof with respect to the PSCo Motion.

42. *Second*, the requested ERP Rule waivers are the *sine qua non* for the issuance of the targeted Solar*Connect RFP, yet Public Service does not identify the specific Rules for which it seeks a waiver. By failing to provide “citation to the specific paragraph of the rule ... from which the waiver ... is sought” (Rule 4 CCR 723-1-1003(c)(I)), the PSCo Motion fails to meet the requirements of Rule 4 CCR 723-1-1003(c), which establishes the required content of a waiver request. The ALJ finds that the PSCo Motion is deficient procedurally as it lacks the required elements for a request for rule waiver. The PSCo Motion must be denied on this basis.

43. *Third*, in Decision No. C13-0094 and as relevant here, the Commission addressed the Company’s request for authorization to issue RFPs to acquire renewable resources outside the ERP process in response to market conditions. In denying the requested authorization, the Commission said, as pertinent here:

While we agree with Public Service that the Company should pursue resources when a significant benefit to consumers is likely to be achieved, Public Service has sought waivers successfully pursuant to the ERP Rules when such opportunities have arisen in the past. *Public Service can continue to use this waiver process to acquire resources outside of the planning process if and when **compelling circumstances** are present.*

Decision No. C13-0094 at ¶ 55 (italics and bolding supplied). In the PSCo Motion (assuming the Company identified the specific ERP Rules to be waived, which it did not), the Company did not demonstrate the existence of compelling circumstances that warrant granting the requested ERP Rule waivers.

44. Without the ERP Rule waivers, the other relief in the PSCo Motion (*i.e.*, authority to issue the targeted Solar*Connect RFP, to review the responsive bids, to select the winning bidder(s), and to negotiate a PPA with each winning bidder⁸) cannot be granted. The ALJ will deny the PSCo Motion.

5. Public Service to Make Filing Concerning Request for Waivers.

45. As pertinent here, the Application at 7 requests “a waiver of Commission Rules regarding acquiring resources outside of the electric resource planning process under the Commission’s ERP Rules, 4 [CCR] 3600, et seq.”

46. The Application does not identify the specific Rules that the Company seeks to have waived if the Application is granted. In addition, the prefiled direct testimony and attachments in support of the Application do not list the Rules that the Company seeks to waive.

47. As discussed above, the PSCo Motion contains the same request for waiver but does not identify the Rules that the Company seeks to have waived if the PSCo Motion were to be granted. The PSCo Motion has been denied.

48. At the prehearing conference, Public Service stated that denial of the PSCo Motion did not change the request for waiver stated in the Application. At present, there is no list of the specific Rules that Public Service seeks to have the Commission waive if the Application is granted.

⁸ The Company proposes to negotiate a PPA with each winning bidder but not to sign the PPA until the Commission has approved the Solar*Connect program.

49. The ALJ will order Public Service to file, not later than **April 6, 2016**, a list of the specific Commission Rules that the Company seeks to have waived if the Application is granted.⁹

C. Public Service Notice of Intent Filed on February 29, 2016.

50. On February 29, 2016, the Company filed in this Proceeding a Notice of Intent as ordered by the Commission in Decision No. C16-0127.¹⁰

51. By Decision No. R16-0234-I, the ALJ directed Public Service to be prepared to discuss the Notice of Intent and its impact (if any) on the issues in this Proceeding. During the prehearing conference, the Company explained -- and the Parties discussed -- the Notice of Intent and its relationship to the issues in this Proceeding.

52. At this time, the ALJ will make no determination concerning the Notice of Intent as it may relate to the issues in this Proceeding.

D. Public Service Application for Acceptance of Electric Resource Plan Technical Inputs and Assumptions (Proceeding No. 16A-0138E).

53. On February 29, 2016, Public Service filed a Verified Application for Acceptance of its Electric Resource Plan Technical Inputs and Assumptions (Technical Inputs Application). That filing commenced Proceeding No. 16A-0138E.

54. By Decision No. R16-0234-I, the ALJ directed Public Service to be prepared to discuss the relationship (if any) of the Technical Inputs Application to: (a) the Notice of Intent;

⁹ The ALJ notes that, on April 6, 2016, the Company filed its Itemization of Rules Subject to Public Service's Waiver Request.

¹⁰ That Decision was issued on February 16, 2016 in Proceeding No. 15V-0473E, *In the Matter of the Petition of Public Service Company of Colorado for Approval of Waivers and Variances to Delay the Filings of Its Next Electric Resource Plan and Qualifying Retail Utility Compliance Plan as well as Bifurcate the Filing of Such Plans as Required in Proceeding Nos. 11A-418E; 11A-869E/12A-782E/12A-785E; 11A-870E; 13A-0836E; 14V-0188E.*

(b) the Solar Integration Study for Public Service Company (dated February 9, 2009) filed as Attachment JFH-4 to the Direct Testimony of James F. Hill in this Proceeding; and (c) the Effective Load Carrying Capability Study for Solar Generation Resources (dated May 23, 2013) filed as Attachment JFH-5 to the Direct Testimony of James F. Hill in this Proceeding. During the prehearing conference, the Company explained -- and the Parties discussed -- the Technical Inputs Application and its relationship to, and impact on, this Proceeding and the two referenced attachments to the Direct Testimony of James F. Hill.

55. At this time, the ALJ will make no determination concerning the Technical Inputs Application and Proceeding No. 16A-0138E as they may relate to the issues in the instant Proceeding.

E. Staff Petition for Declaratory Ruling: § 40-2-124(1)(f)(I), C.R.S., and Rule 4 Code of Colorado Regulations 723-3-3660(h) (Proceeding No. 16D-0168E).

56. On March 11, 2016, Staff filed a Petition for Declaratory Order (Staff Petition). On March 17, 2016, by Decision No. C16-0223-I, the Commission accepted the Staff Petition; established the intervention period and filing dates; and commenced Proceeding No. 16D-0168E.

57. In its petition, Staff requests

that the Commission determine the amount of new eligible energy resources an investor-owned utility shall be allowed to develop and own as utility rate-based property, without being required to comply with certain competitive bidding requirements, under Rule 3660(h) of the Commission's Renewable Energy Standard Rules, 4 *Code of Colorado Regulations* 723-3-3650, *et seq.*

Decision No. C16-0223-I at ¶ 1.

58. During the prehearing conference, the ALJ asked whether the issue presented in Proceeding No. 16D-0168E is an issue that pertains to the instant Proceeding. Staff responded, and other Parties agreed, that the issue raised in the Staff Petition does not pertain to the instant Proceeding.

59. At this time, the ALJ will make no determination concerning the Staff Petition as it may relate to the issues in this Proceeding.

F. Procedural Schedule, Evidentiary Hearing Dates, and Related Matters.

60. At the prehearing conference, the Parties proposed a procedural schedule that the ALJ finds generally acceptable because the schedule allows sufficient time for a Commission decision in this Proceeding to issue by January 3, 2017.

61. In reviewing the proposed procedural schedule after the prehearing conference, the ALJ noted that the date for filing corrected testimony and attachments is the last business day before the commencement of the evidentiary hearing. This does not provide sufficient time, prior to the commencement of the evidentiary hearing, for the Parties to consider the corrected testimony and attachments, to conduct discovery on the corrected testimony and attachments, and to take the corrected testimony and attachments into account when preparing cross-examination questions. In addition, the ALJ does not have sufficient time to consider the corrected testimony and attachments prior to commencement of the hearing. Finally, corrections to testimony and attachments may affect a Party's willingness to consider a stipulation or settlement; the proposed filing date does not allow corrected testimony and attachments to be taken into account when a Party considers whether to enter into a stipulation or settlement. In short, the proposed date defeats the purposes for filing corrected testimony and attachments.

62. As a result, the ALJ will **modify the proposed procedural schedule** to require the Parties to file corrected testimony and attachments on **July 8, 2016**. This is the principal modification made to the procedural schedule discussed at the prehearing conference.

63. The ALJ will adopt the following procedural schedule: (a) not later than **May 27, 2016**, each Intervenor will file its answer testimony and attachments; (b) not later than **June 28,**

2016, Applicant will file its rebuttal testimony and attachments; (c) not later than **June 28, 2016**, each Intervenor will file its cross-answer testimony and attachments;¹¹ (d) not later than **July 5, 2016**, each Party will file its prehearing motions, including (without limitation) dispositive motions, motions *in limine*, and motions to strike; (e) not later than **July 8, 2016**, each Party will file its corrected testimony and attachments; (f) not later than **July 11, 2016**, each Intervenor will provide to Public Service the order of the Intervenor's witnesses (including limitations or restrictions on witness availability) and the Intervenor's estimate of cross-examination for each witness the Intervenor intends to cross-examine; (g) not later than **July 12, 2016**, the Parties will file any stipulation¹² and any settlement¹³ reached; (h) not later than **noon on July 14, 2016**, Public Service will file the order of witnesses in this Proceeding, each Party's estimate of cross-examination for each witness, the order of cross-examination, and a list of exhibits that includes the prefiled testimony and attachments;¹⁴ (i) the evidentiary hearing will be held on **July 18 through 22, 2016**;¹⁵ and (j) not later than **August 5, 2016**, each Party will file its post-hearing statement of position, to which (absent further order) no response will be permitted.

64. **The Parties are advised and are on notice that**, absent a showing of unusual circumstances, the ALJ will not permit a Party to ask its witness, as part of the witness's oral direct testimony, to make one or more corrections to prefiled testimony or to an attachment appended to prefiled testimony. **The Parties are advised and are on notice that** the sponsoring Party: (a) must assure that, when offered as an exhibit at hearing, its witness's testimony and attachments are exactly as prefiled, including all corrections filed pursuant to the

¹¹ Cross-answer testimony addresses and responds only to the answer testimony of other Intervenors.

¹² Rule 4 CCR 723-1-1407 governs stipulations.

¹³ Rule 4 CCR 723-1-1408 governs settlements.

¹⁴ This is a new filing requirement and was not discussed at the prehearing conference.

procedural schedule; and (b) must assure that all corrections have been prefiled in accordance with the procedural schedule.

65. **The Parties are advised and are on notice that**, if the Parties stipulate to the admission of a witness's testimony and attachments and the Parties propose that the witness not testify, the testimony and attachments must have an affidavit from the witness attesting to the content of the testimony and attachments. In addition, the witness's name must appear on the list of witnesses with the notation that the Parties stipulate to the admission of the witness's testimony and attachments; this will permit the ALJ to determine whether the witness may need to appear because the ALJ has questions for the witness. Finally, the stipulated testimony and attachments must appear on the list of exhibits.

66. *With respect to witness testimony and attachments that contain highly confidential information¹⁶ or confidential information¹⁷, or both:* (a) if an entire document is not confidential, each portion of the document that contains confidential information will be clearly marked (*e.g.*, shaded), and each page will state at the top (*e.g.*, in the heading): "This page contains confidential information as shown"; (b) if an entire document is not highly confidential, each portion of the document that contains highly confidential information will be clearly marked (*e.g.*, shaded), and each page will state at the top (*e.g.*, in the heading): "This page contains highly confidential information as shown"; (c) if the same page contains both confidential information *and* highly confidential information, the highly confidential information will be

¹⁵ At the prehearing conference, Public Service stated that it intends to order daily transcript of the evidentiary hearing.

¹⁶ As used in this Interim Decision, highly confidential information is information that, in this Proceeding, the ALJ has determined is highly confidential and that is subject to an order for extraordinary protection.

¹⁷ As used in this Interim Decision, confidential information is information that a Party claims is confidential and that is filed under seal with the Commission.

differentiated from the confidential information (*e.g.*, by use of different shading), and each page will state at the top (*e.g.*, in the heading): “This page contains highly confidential information and confidential information as shown”; and (d) the public version of a document that contains confidential information or highly confidential information, or both, will identify (*e.g.*, in the heading) each page on which that information appears.

67. Rule 4 CCR 723-1-1100(c) requires the cover page of a document to state that the document contains confidential information and to identify where in the document the confidential information is found. The same notice requirement applies to a document that contains highly confidential information.

68. For clarity of the evidentiary record and to assist the ALJ and the Parties during the hearing, a sponsoring Party must assure that, where possible, the page numbers and the line numbers are the same on the public version of a document, the confidential version of the document, and the highly confidential version of the document.

G. Discovery.

69. Except as modified by this Interim Decision, Rule 4 CCR 723-1-1405 will govern discovery.

70. Subject to Rules 4 CCR 723-1-1100 and 723-1-1101, discovery requests will be served on all Parties.

71. Subject to Rules 4 CCR 723-1-1100 and 723-1-1101, discovery responses will be served on all Parties.

72. The ALJ will order these cut-off dates for serving discovery requests: (a) *discovery addressed to direct testimony and attachments*: the last day to propound this discovery is the date on which answer testimony and attachments are to be filed; (b) *discovery*

addressed to answer testimony and attachments: the last day to propound this discovery is the date on which rebuttal testimony and attachments and cross-answer testimony and attachments are to be filed; (c) *discovery addressed to rebuttal testimony and attachments:* the last day to propound this discovery is July 14, 2016; (d) *discovery addressed to cross-answer testimony and attachments:* the last day to propound this discovery is July 14, 2016.

73. Parties may serve discovery no later than 5:00 p.m. Mountain Time (MT) on Monday through Thursday and may serve discovery no later than 3:00 p.m. MT on Friday. Discovery served later than these stated times will be deemed to be served on the next business day.

74. The ALJ will order the following response times to discovery: (a) *discovery addressed to direct testimony and attachments:* response time to this discovery is ten calendar days from the date of service; (b) *discovery addressed to answer testimony and attachments:* response time to this discovery is seven calendar days from the date of service; (c) *discovery addressed to rebuttal testimony and attachments:* response time to this discovery is five calendar days from the date of service; and (d) *discovery addressed to cross-answer testimony and attachments:* response time to this discovery is five calendar days from the date of service. In calculating these response times, May 30 and July 4, 2016 are excluded (that is, are not counted).

75. Motions pertaining to discovery may be filed at any time. The ALJ will **shorten, to three business days, the response time to a discovery-related motion.** If necessary, the ALJ will hold a hearing on a discovery-related motion as soon as practicable after the motion and response are filed.

H. Confidential Information and Highly Confidential Information.

76. Rules 4 CCR 723-1-1100 and 723-1-1101 will govern treatment of confidential information and will govern motions for extraordinary protection of highly confidential information.

77. **The Parties are advised and are on notice that** information in this Proceeding will not be highly confidential information *unless* a party has filed in this Proceeding, and the ALJ has granted, a motion seeking extraordinary protection for the information that is claimed to be highly confidential.

I. Hearing Exhibits.

78. Each type of a witness's testimony and attachments (*e.g.*, direct, answer, rebuttal, cross-answer) will be one hearing exhibit.

79. Hearing exhibits will be marked numerically and sequentially, beginning with the number 1, irrespective of the sponsoring Party.

80. Prefiled testimonies and exhibits will be the first hearing exhibits and will be given hearing exhibit numbers such that all the testimonies and exhibits sponsored by one witness are together. As an example, assume that WRA witness Brown prefiles answer testimony and cross-answer testimony; her testimonies would be marked as Hearing Exhibits No. 20 (answer) and No. 21 (cross-answer).

81. Testimony and attachments hearing exhibits will be numbered in the order in which the witnesses will testify.

82. *With respect to marking hearing exhibits that contain highly confidential information or confidential information, or both:* (a) any portion of a witness's testimony and attachments that contains *confidential information* will be marked as Confidential Hearing

Exhibit No. XXA and, at the hearing, will be in a separate and sealed envelope marked in accordance with Rule 4 CCR 723-1-1100(c)(III); (b) any portion of a witness's testimony and attachments that contains *highly confidential information* will be Highly Confidential Hearing Exhibit No. XXB and, at the hearing, will be a separate and sealed envelope marked in accordance with Rule 4 CCR 723-1-1100(c)(III); (c) if a page contains both confidential information and highly confidential information, the highly confidential information will be redacted from the page in the Confidential Hearing Exhibit; and (d) if a page contains both confidential information and highly confidential information, the highly confidential information will be differentiated (*e.g.*, by different shading) from the confidential information in the Highly Confidential Exhibit. *See also* ¶ 66 of this Interim Decision (discussing identifying confidential and highly confidential information in testimony and attachments).

83. As an example of hearing exhibit marking, assume that Boulder witness Jones-Smith files answer testimony and attachments that contain confidential information and highly confidential information and files cross-answer testimony and attachments that contain highly confidential information. His answer testimony and attachments are given one hearing exhibit number (in the example, Hearing Exhibit No. 40); the confidential information is Hearing Exhibit No. 40A; and the highly confidential information is Hearing Exhibit No. 40B. His cross-answer testimony and attachments are given one hearing exhibit number (in the example, Hearing Exhibit No. 41); and the highly confidential information is Hearing Exhibit No. 41B.

84. Because all testimony and attachments will be prefiled and all corrections to testimony and attachments will be prefiled (*see* ¶¶ 63 and 64 of this Interim Decision), the sponsoring Party must provide at the hearing only one paper copy of prefiled testimony and attachments (including prefiled corrections) to be marked as a hearing exhibit.

The sponsoring Party need not provide a copy of prefiled testimony and attachments (including prefiled corrections) for the ALJ and for the other Parties.

85. The sponsoring Party must have sufficient paper copies of each document (other than prefiled testimony and attachments) to be offered as a hearing exhibit: (a) to provide one copy to be marked as a hearing exhibit; (b) to provide one copy to the ALJ; and (c) to provide one copy to each of the other Parties.

86. Except as modified by this Interim Decision, Rule 4 CCR 723-1-1502(c) will govern administrative notice in this matter. In this Proceeding, the ALJ will not take administrative notice of a document simply because the document is in the Commission's files. In addition, in this Proceeding, a Party that requests administrative notice of a document must provide a complete copy of the document so that the document can be marked as a hearing exhibit for identification.

87. If counsel intends to examine a witness about a statutory provision, a Commission rule, or a Commission decision, then at the evidentiary hearing, counsel must have a copy of the statute, rule, or decision to provide to the witness and a copy to provide to counsel for the Party sponsoring the witness.

I. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, the time for issuance of a Commission decision in this Proceeding is extended to and including January 3, 2017.

2. The Motion for Late Intervention filed on March 21, 2016 by Sam's West, Inc., is granted.

3. Sam's West, Inc., is an Intervenor and a Party in this Proceeding.
4. The Motion for Late Intervention filed on March 21, 2016 by Wal-Mart Stores, Inc., is granted.
5. Wal-Mart Stores, Inc., is an Intervenor and a Party in this Proceeding.
6. Consistent with the discussion above, the Verified Motion to Appear *Pro Hac Vice* on Behalf of Wal-Mart Stores, Inc. and Sam's West, Inc. filed by Kelly A. Williams, Esquire, is granted.
7. Kelly A. Williams, Esquire, is granted permission to appear in this Proceeding *pro hac vice* as counsel for Wal-Mart Stores, Inc., and Sam's West, Inc.
8. Kelly A. Williams, Esquire, is held to the advisement contained in ¶ 28 of this Interim Decision.
9. Lisa V. Perry, Esquire, is held to the advisement contained in ¶ 30 of this Interim Decision.
10. Consistent with the discussion above, the Motion for Approval to Issue Targeted Request for Proposals to Acquire Generation Resource to Support the Solar*Connect Program filed on January 27, 2016 by Public Service Company of Colorado (Public Service) is denied.
11. Consistent with the discussion above, not later than April 6, 2016, Public Service Company of Colorado shall file a list of the specific Commission Rules that it seeks to have waived if the Application is granted.
12. The evidentiary hearing in this Proceeding is scheduled for the following dates, at the following times, and in the following location:

DATES: July 18 through and including 22, 2016

TIMES: 9:00 a.m. each day

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

13. Consistent with the discussion above, the following procedural schedule is adopted: (a) not later than May 27, 2016, each Intervenor shall file its answer testimony and attachments; (b) not later than June 28, 2016, Public Service shall file its rebuttal testimony and attachments; (c) not later than June 28, 2016, each Intervenor shall file its cross-answer testimony and attachments; (d) not later than July 5, 2016, each Party shall file its prehearing motions; (e) not later than July 8, 2016, each Party shall file its corrected testimony and attachments; (f) not later than July 11, 2016, each Intervenor shall provide to Public Service the order of the Intervenor's witnesses and the Intervenor's estimate of cross-examination for each witness the Intervenor intends to cross-examine; (g) not later than July 12, 2016, the Parties shall file any stipulation and any settlement reached; (h) not later than noon on July 14, 2016, Public Service shall file the order of witnesses in this Proceeding, each Party's estimate of cross-examination for each witness, the order of cross-examination, and a list of exhibits that includes the prefiled testimony and attachments; and (i) not later than August 5, 2016, each Party shall file its post-hearing statement of position, to which (absent further order) no response will be permitted.

14. Consistent with the discussion above, Parties shall identify, as described above, confidential information and highly confidential information contained in testimony and attachments and other documents filed in this Proceeding.

15. Parties shall comply with the notice requirements established in Rule 4 *Code of Colorado Regulations* 723-1-1100(c)(I).

16. Except as modified by this Interim Decision, Rule 4 *Code of Colorado Regulations* 723-1-1405 shall govern discovery in this Proceeding.

17. The provisions of ¶¶ 69-75 of this Interim Decision shall govern discovery in this Proceeding.

18. The response time to a motion pertaining to discovery is shortened to three business days.

19. Except as modified by this Interim Decision, Rule 4 *Code of Colorado Regulations* 723-1-1100 shall govern treatment of information claimed to be confidential in this Proceeding.

20. Except as modified by this Interim Decision, Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101 shall govern extraordinary protection of information found to be highly confidential in this Proceeding.

21. Except as modified by this Interim Decision, Rule 4 *Code of Colorado Regulations* 723-1-1502(c) shall govern administrative notice in this Proceeding.

22. The provisions of ¶ 86 of this Interim Decision shall govern administrative notice in this Proceeding.

23. The Request to be Excused from Prehearing Conference filed on March 30, 2016 by Interwest Energy Alliance is granted.

24. Interwest Energy Alliance is excused from the March 31, 2016 prehearing conference.

25. Response time to the Request to be Excused from Prehearing Conference is waived.

26. The Parties are held to the advisements in the Interim Decisions issued in this case and to the requirements and directives in this Interim Decision.

27. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director