

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19D-0193E

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE COMPANY OF COLORADO
FOR A DECLARATORY RULING REGARDING THE TWIN EAGLE TRANSACTION.

**DECISION GRANTING APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION**

Mailed Date: June 27, 2019

Adopted Date: June 26, 2019

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants Public Service Company of Colorado's (Public Service or PSCo) application for rehearing, reargument, or reconsideration (RRR) that was filed on June 14, 2019. In so doing, we clarify language in our June 11, 2019 declaratory order and conclude that sales made under the three Twin Eagle Power Sale Agreements (PSAs) should not be subject to the curtailment provisions in the *Policy for Resource Management and Cost Assignment for Short-Term Electric Energy Transactions* (Trading Business Rules).

B. Background

2. On April 12, 2019, Public Service filed its Verified Petition for a Declaratory Ruling (Petition). Public Service requested that we consider the merits of the Petition without a hearing if it remained uncontested and that we issue our decision by June 12, 2019.

3. In support of the Petition, Public Service filed an affidavit from Thomas A. Imbler, Vice President of Commercial Operations at Xcel Energy Services, Inc. A map showing

the service territory for Public Service alongside the service territory for the three relevant Twin Eagle PSAs is attached to the affidavit.

4. The Commission accepted the Petition on April 19, 2019 by Decision No. C19-0348-I. The notice and intervention deadline was April 29, 2019. Any intervening party was able to file a response until May 15, 2019.

5. No Interventions were filed.

6. On May 15, 2019, the Commission issued Interim Decision No. C19-0419-I ordering Public Service to supplement the record with additional information about each of the three PSAs. Public Service filed the requested information on May 17, 2019.

7. The Petition asked that we determine whether Public Service's intended acquisition of certain wholesale power agreements and related contracts from Twin Eagle Resource Management, LLC, are "Proprietary" Book transactions under the Trading Business Rules. Public Service:

intends to treat the sales under the PSAs as Prop[er]Book transactions under its [Trading] Business Rules. While the transaction exceeds the \$100 million notional value threshold and two of the PSAs exceed the five-year limit contemplated by the [Trading] Business Rules for Prop[er]Book transactions, [Public Service] has the right under those rules to engage in transactions that are exceptions to the [Trading] Business Rules, if the transaction will benefit the Company's customers.¹

Public Service inquired whether these particular PSAs, if they exceed the national value threshold or five years in duration, or both, can be properly considered Prop Book transactions under the Trading Business Rules. Public Service asserted that a "declaratory order from the Commission would eliminate uncertainty and the potential for litigation in the future."²

¹ Petition at p 2.

² *Id.*

8. We issued our declaratory order on June 10, 2019 by Decision No. C19-0497. In it, we concluded that sales under all three PSAs may be treated as Prop Book transactions, ordered PSCo to include in its annual Electric Commodity Adjustment prudence review filing a calculation of short-term sales margins arising from the Twin Eagle PSAs, clarified that “when the Company uses system resources to serve energy obligations in these PSAs, 90 percent of the margin must be assigned to ratepayers and 10 percent to the company,”³ and declared that the curtailment provisions in the Trading Business Rules apply to sales made under the PSAs. Public Service’s RRR addresses the last two elements of our decision.

C. Discussion and Analysis

9. First, Public Service asks us to clarify that the statement in our decision, “when the Company uses system resources to serve energy obligations in these PSAs, 90 percent of the margin must be assigned to ratepayers and 10 percent to the company,”⁴ means what Public Service thinks it means, which is that “if the Generation Book . . . were to sell energy to the Prop Book for eventual sale to the PSAs, . . . the margin from the sale of energy from the Gen book to the Prop Book will be the Commission[-]ordered 90 percent/10 percent customer/[c]ompany margin sharing[and] that the [c]ompany will continue to retain 90 percent of the margins on the Prop Book portion of the transaction, [which is] the sale from the Prop Book to the PSAs.”⁵ It does, and we so clarify in this Decision.

10. Second, Public Service argues against applying to sales under these PSAs the curtailment provisions in the Business Trading Rules. In support of its position, PSCo contends that: (1) “[s]hort-term wholesale sales” (the types of sales governed by the Trading Business

³ Decision No. C19-0497 at ¶ 21.

⁴ PSCo RRR at p. 6.

⁵ *Id.* at pp. 6-7.

Rules) are contemplated as “primarily day-ahead and hour-ahead sales made to balance customers’ total resource portfolios”⁶ and that the duration of these transactions “far exceed what was anticipated for short-term wholesale sales”⁷ in the Trading Business Rules; (2) making sales under the PSAs subject to curtailment would make it “impossible” to meet PSCo’s obligations under the PSAs because the PSAs require firm energy commitments; (3) native load customers’ reliability is unaffected by the Twin Eagle Transaction because the Trading Business Rules require that the Gen Book (PSCo’s generation assets and native load servicing) receive priority when evaluating available energy to meet obligations under the PSAs; and (4) these PSAs do not obligate the company to use System Resources to serve these PSA loads.⁸

11. Public Service’s contentions are persuasive. Because these PSAs are for firm (uninterruptable) energy commitments that will be serviced primarily through market purchases of hourly, daily, and monthly blocks of energy from the wholesale markets,⁹ subjecting sales under the PSAs to curtailment (interruption) provisions in the Trading Business Rules would make it challenging or perhaps, as PSCo argues, even “impossible” for the company to assume the contracts. If that were the case, the benefits to Public Service’s retail ratepayers from sales under the PSAs¹⁰ would be lost. As well, because PSCo intends to meet the energy obligations under the PSAs largely by going to market, and because the magnitude of the transactions is modest, there is less risk that these PSAs will negatively impact the company’s retail customers. Accordingly, we find good cause to grant Public Service’s request to exempt these transactions from the curtailment provisions of the Trading Business Rules.

⁶ *Id.* at p. 5.

⁷ *Id.*

⁸ Imbler Affidavit ¶ 7.

⁹ Imbler Affidavit ¶ 12.

¹⁰ Discussed in paragraphs 17-21 of Decision C19-0497 in this proceeding.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument or Reconsideration filed by Public Service Company of Colorado (Public Service) on June 14, 2019 is granted consistent with the discussion above.
2. Public Service may treat sales made under the three Twin Eagle Power Sale Agreements (PSAs) as Proprietary Book transactions consistent with the discussion above.
3. The curtailment provisions of the *Policy for Resource Management and Cost Assignment for Short-Term Electric Energy Transactions* (Trading Business Rules) do not apply to sales made under the three Twin Eagle PSAs.
4. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.
5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 26, 2019.**

(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

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners