

Decision No. C22-0757-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0515E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS COST RECOVERY PROPOSAL ASSOCIATED WITH THE EARLY RETIREMENTS OF COAL GENERATION ASSETS CRAIG 2, HAYDEN 1, AND HAYDEN 2, AND THE RETIRING COAL PORTION OF PAWNEE.

**INTERIM COMMISSION DECISION SETTING
NOTICE AND INTERVENTION PERIOD AND
GRANTING, IN PART, THE MOTION FOR EXPEDITED
NOTICE, SHORTENED NOTICE AND INTERVENTION
PERIOD, COMMISSION HEARING *EN BANC*, AND AN
EXPEDITED DECISION, AND REQUIRING
SUPPLEMENTAL DIRECT TESTIMONY**

Mailed Date: November 23, 2022

Adopted Date: November 23, 2022

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission grants, in part, the Motion for Expedited Notice, Shortened Notice and Intervention Period, Commission Hearing *en banc*, and an Expedited Decision that Public Service Company of Colorado (Public Service or the Company) filed on November 16, 2022. This Decision establishes a shortened notice and intervention period for the Application for Approval of its Cost Recovery Proposal Associated with the Early Retirements of Coal Generation Assets Craig 2, Hayden 1 and Hayden 2, and the retiring coal portion of Pawnee (Application).

2. Requests for intervention, including a notice of intervention by right of Staff of the Colorado Public Utilities Commission (Staff), shall be filed no later than **November 30, 2022**.

3. In addition, through this Decision, the Commission directs Public Service to provide supplemental direct testimony.

B. Discussion

4. Public Service's Application in this Proceeding stems from the Commission's Phase I Decision (Decision No. C22-0459) in Proceeding No. 21A-0141E, addressing Public Service's 2021 Electric Resource Plan (ERP) and Clean Energy Plan (CEP). In Decision No. C22-0459, the Commission directed Public Service to file an application initiating a new proceeding that comprehensively looks at the coal plant cost recovery issues surrounding Craig, Hayden 1 and 2, and Pawnee.¹ Noting the Company's desire to have certainty on the cost recovery approaches in a timely manner, the Commission stated that the separate proceeding could be conducted in parallel with Phase II of the 2021 ERP and CEP.

5. Public Service states that the Application it filed on November 17, 2022, fulfills the requirement in Decision No. C22-0459 to initiate a new proceeding.

6. In its Motion filed contemporaneously with the Application, as well as the Direct Testimony of Jack Ihle (Hearing Exhibit 101), Public Service argues that an expedited decision in this Proceeding is important not just to the Company but also to ensure that Phase II of the 2021 ERP and CEP can proceed as scheduled based on the most accurate information possible.² In order for the Phase II modeling (including the selection of portfolios and resource acquisitions) to

¹ Decision No. C22-0459, ¶ 65.

² Motion, p. 4.

move forward in a timely, fully informed manner, Public Service requests that the Commission issue its Decision on the Application on or before March 16, 2023.

7. To facilitate the Company's requested decision date of March 16, 2023, Public Service makes several other requests in the Motion. Specifically, the Company asks that the Commission issue the notice of the Application within five days, agree to hear the Application *en banc*, shorten the notice and intervention period to seven days of the notice, and direct Public Service and all intervening parties to confer on an expedited procedural schedule that will reasonably facilitate a Commission decision on or before March 16, 2023, and submit a filing reflecting the results of such conferral, on or before December 8, 2022.³

C. Findings and Conclusions

8. Consistent with our statements in Decision No. C22-0459, we recognize the Company's desire for an expedited decision in this Proceeding. It is premature, however, to decide at this early stage and without any feedback from intervenors that the procedural schedule in this Proceeding will be based on a March 16, 2023, decision deadline. Accordingly, we defer deciding Public Service's requested approval of a March 16, 2023, decision deadline.

9. Moving to the Company's request for a shortened notice and intervention period, Paragraph (d) of Rule 4 CCR 723-1-1206 of the Commission's Rules of Practice and Procedure, states that unless shortened by Commission decision or rule, the intervention period for notice mailed by the Commission shall expire 30 days after the mailing date. Paragraph (3) of 4 CCR 723-1-1206 requires the Commission's notice to state the date by which any objection, notice of intervention of right, or motion to permissively intervene must be filed.

³ Motion, pp. 5-6.

10. We find good cause to grant Public Service's request for a shortened notice and intervention period. There is a legitimate interest for timely resolution of this Proceeding given its interaction with Public Service's 2021 ERP and CEP.

11. Requests for intervention, including a notice of intervention by right of Staff, shall be filed no later than **November 30, 2022**.

12. Public Service's Application is available for public inspection by accessing the Commission's E-Filings System at: [Colorado.gov/dora/puc](https://colorado.gov/dora/puc). **This Decision is the Commission's notice that Public Service's Application has been filed.**

13. We will likewise grant Public Service's request to hear this Proceeding *en banc*.

14. As for the Company's requests regarding conferral and submission of a proposed procedural schedule, we will modify the Company's requested relief. First, we direct Public Service to confer on a procedural schedule with intervenors of right and any parties that are seeking intervention. In other words, the Company should not wait for a Commission decision ruling on motions to intervene before conferring with prospective parties. Moreover, while any procedural schedule should facilitate timely resolution to this Proceeding given its interaction with Public Service's 2021 ERP and CEP, the Commission defers setting March 16, 2023, as the deadline for an initial decision in this Proceeding. Finally, Public Service shall file a motion for approval of the consensus procedural schedule or submit a joint status report reflecting the results of such conferral, on or before December 8, 2022.

15. In addition, the Commission directs Public Service to file supplemental direct testimony regarding the potential use of loans made available under the Inflation Reduction Act (IRA). Specifically, the Company shall submit supplemental direct testimony in this Proceeding that describes the potential use of IRA loans for the assets at issue in this Proceeding, the

Company's efforts to take advantage of this IRA program, and what below-market loans might mean for the economics of the various options before us in this Proceeding. The Commission also directs Public Service to provide some thoughts on how the Commission could ensure that the use of these IRA funds creates a win-win situation for both customers and the Company's financial health. The Company shall incorporate a proposed deadline for this supplemental direct testimony in any proposed procedural it submits to the Commission.

II. ORDER

A. It Is Ordered That:

1. The Motion for Expedited Notice, Shortened Notice and Intervention Period, Commission Hearing *en banc*, and an Expedited Decision that Public Service Company of Colorado (Public Service or the Company) filed on November 16, 2022, is granted, in part.

2. The Company's request for a shortened notice and intervention period for its Application for Approval of its Cost Recovery Proposal Associated with the Early Retirements of Coal Generation Assets Craig 2, Hayden 1 and Hayden 2, and the retiring coal portion of Pawnee (Application) filed on November 16, 2022, is granted.

3. Service of this Decision will provide notice of Public Service's Application to all interested persons, firms, and corporations.

4. The notice and intervention period shall expire at **5:00 p.m. on November 30, 2022.**

5. Any person desiring to intervene or participate as a party in this proceeding, including Staff of the Colorado Public Utilities Commission, shall file a petition for leave to

intervene, or under the Commission's Rules of Practice and Procedure, 4 CCR 723-1, file other appropriate pleadings to become a party, no later than **November 30, 2022**.

6. All persons who file an objection, notice of intervention as of right, motion to permissively intervene, or any other appropriate pleading shall do so in accordance with the instructions set forth in the Commission's Rules of Practice and Procedure and this Decision.

7. We defer ruling on Public Service's request to set a decision deadline of March 16, 2023, consistent with the discussion above.

8. The Company's request that this Proceeding be heard *en banc* is granted.

9. Public Service shall confer on a procedural schedule with intervenors of right and any parties that are seeking intervention, and Public Service shall file a motion for approval of the consensus procedural schedule or submit a joint status report reflecting the results of such conferral, on or before December 8, 2022, consistent with the discussion above.

10. Public Service shall file supplemental direct testimony regarding the potential use of loans made available under the Inflation Reduction Act for the assets at issue in this Proceeding, consistent with the discussion above.

11. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 23, 2022**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners