

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

PROCEEDING NO. 22A-0345E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING EXPENSES INCURRED FOR THE PERIOD JANUARY 2021 THROUGH DECEMBER 2021 THAT ARE RECOVERED THROUGH THE ELECTRIC COMMODITY ADJUSTMENT AND PURCHASED CAPACITY COSTS RECOVERED THROUGH THE PURCHASED CAPACITY COST ADJUSTMENT FOR THE SAME PERIOD AND APPROVING THE CALCULATION OF 2021 SHORT TERM SALES MARGINS.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
ALENKA HAN  
EXTENDING TIME FOR A COMMISSION DECISION,  
GRANTING INTERVENTION,  
GRANTING HIGHLY CONFIDENTIAL PROTECTIONS,  
AND  
SETTING PROCEDURAL SCHEDULE**

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Mailed Date: November 07, 2022

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**I. STATEMENT**

1. On August 1, 2022, Public Service Company of Colorado (Public Service or the Company) filed its verified application seeking approval of the following: (1) the fuel, purchased energy, purchased wheeling, and other expenses incurred from January 1, 2021 through December 31, 2021, that have been reflected in the Company's Electric Commodity Adjustment (ECA); (2) the purchased capacity expenses incurred by the Company from January 1, 2021, through December 31, 2021; and, (3) the Company's calculation of the 2021 Short-Term Sales Margins that have been used to adjust the 2022 ECA Deferred Account Balance.

2. On August 18, 2022, the Colorado Office of Utility Consumer Advocate (UCA) filed its Notice of Intervention of Right, Request for Hearing, and Entry of Appearances. The UCA listed at least fifteen separate issues they wished to investigate.

3. On September 1, 2022, the Trial Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing. Staff identified eight issues it intends to raise and address in this proceeding.

4. On August 31, 2022, the Colorado Independent Energy Association (CIEA) filed a motion to permissively intervene in this ECA prudence review proceeding. In its motion, CIEA indicated that it represents the interests of independent power producers (IPPs) and is seeking to intervene in this proceeding to ensure curtailment data related to the ECA "safeguards, and does not impair, competitive bidding of renewable resources and market participation by IPPs."

5. Contemporaneously with its application, on August 1, 2022, Public Service filed its Motion for Extraordinary Protection.

6. On September 21, 2022, the Commission deemed the Application complete and referred it to an Administrative Law Judge (ALJ) for disposition.

7. The interventions by right of UCA and Staff are noted.

**II. TIME FOR A COMMISSION DECISION**

8. Since the filing falls under § 40-6-109.5(1), C.R.S. (2022), the time for a Commission decision to issue is 120 days after the Application is deemed complete. If the Commission finds that additional time is necessary for a decision, the date may be extended an additional 130 days.

9. In order to facilitate the unopposed procedural schedule proposed by the Company, it is found necessary to extend the time for issuance of a Commission decision. The applicable statutory period shall be extended by an additional 130 days up to and including May 23, 2023.

**III. CIEA'S MOTION TO INTERVENE**

10. CIEA requests permissive intervention in this proceeding.

11. In its motion to intervene, CIEA asserts that its intervention is necessary to protect its interests pertaining to the competitive bidding of renewable resources and market participation by the members of its trade association. It notes that the “tangible and pecuniary interests” of its members may be “directly [and] substantially impacted” by any decision in this proceeding. Finally, CIEA states that its intervention in this proceeding will “not unduly broaden” the issues raised by the Company, Staff, or the UCA.

12. Two classes of parties may intervene in proceedings such as this: parties with a statutory right or a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding and would not otherwise be adequately represented (permissive intervention).

Rule 1401(b) and (c), of the Commission's Rules of Practice and Procedure, 4 *Code of Colo. Regulations* (CCR) 723-1; see § 40-6-109(1), C.R.S., *RAM Broadcasting of Colo. Inc., v. Pub. Utils. Comm'n*, 702 P.2d 746, 749 (Colo. 1985) ("This provision creates two classes that may participate in [Commission] proceedings: those who may intervene as of right and those whom the Commission permits to intervene.").

13. Commission Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, requires persons seeking permissive intervention to show the following:

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. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.

14. The requirement in Rule 1401(c) requiring persons or entities seeking permissive intervention in a proceeding to demonstrate that their interests "would not otherwise be adequately represented" is similar to Colorado Rule of Civil Procedure 24(a), which provides that even if a party seeking intervention in a case has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties. See *Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass'n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case's judgment. See *Denver Chapter of the Colo. Motel Ass'n v. City & Cnty. of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were

already represented by the city). The test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative. The presumption of adequate representation can be overcome by evidence of bad faith, collusion, or negligence on the part of the representative. *Id.*; *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

15. In its motion, CIEA states that the pecuniary interests of its members may be “substantially impacted” by any decision reached in this ECA proceeding. CIEA explains that its mission is to support and encourage the implementation of policies that promote “the competitive acquisition of utility generation resources” as well as “transparency and fairness” in the utility acquisition process.

16. CIEA asserts that it has an interest in participating in this proceeding “to analyze the data resulting from the Company’s 2021 curtailments to ensure that transparency and fairness in the utility resource acquisition processes remains robust.” It suggests that the Company’s curtailments — which are likely to be at issue in this proceeding — could impact the cost of utility generation resources affecting its members.

17. CIEA also notes that it has appeared as a party in several other Commission proceedings addressing electric resource planning (ERP) and clean energy plans (CEPs), including matters involving the Company, Black Hills Energy, and/or Tri-State Generation and Transmission Association, Inc.

18. Finally, CIEA confirms that it does not have a financial relationship with the Company.

19. No objections to CIEA’s motion to intervene have been filed.

20. The ALJ finds that the curtailments at issue in this proceeding could substantially affect the pecuniary interests of CIEA and its members.

21. The ALJ further finds that because CIEA has no financial relationship with the Company, represents the interests of IPPs other than the Company, and is not a consumer whose interests are protected by the UCA, its interests may not be adequately represented and protected in this proceeding.

22. For these reasons, CIEA's motion to intervene will be granted.

**IV. MOTION FOR EXTRAORDINARY PROTECTION OF HIGHLY CONFIDENTIAL INFORMATION**

23. On August 11, 2022, the Company filed its Motion for Extraordinary Protection.

In the Motion, Public Service asks for protection of the following information:

- (1) Attachment MGS-1 and the hourly datasets contained in the attachment, including: both wholesale and retail system load; interchange energy; energy sales/exports and purchases/imports' system lambda and joint dispatch sales and purchases; all resources used to serve system load, including owned fossil and renewable generation, power purchase agreements, purchases and sales, and any other load-serving resources; and estimated renewable curtailment volumes;
- (2) Attachment KLW-2 and the information contained in the attachment, including: complete GADS data and unit-level EAF percentages for the Company's owned fossil generation assets; complete CADS data and annual Equipment EAF excluding Outside Management Control ("xEEAF") for the Company's owned renewable resources; and a comparison of forecasted annual generation to actual production for those same Company-owned renewable resources;
- (3) workpapers supporting Attachments MGS-1 and KLW-2; and,
- (4) any other documents or information that could be used to derive the information contained in Attachments MGS-1 and KLW-2.<sup>1</sup>

24. Public Service seeks an order imposing highly confidential protections for the above-listed categories of Highly Confidential Information. Based upon extraordinary circumstances, Public Service requests that access be restricted to the Commission, Trial Staff, and the UCA, and attorneys representing these entities. In accordance with Rule 1101(b)(V), 4

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<sup>1</sup> See Motion for Extraordinary Protection at ¶ 3.

CCR 723-1, the motion was accompanied by a specific form of nondisclosure agreement requested.

25. No objections to the Motion for Extraordinary Protection have been filed.

26. Indeed, on August 18, 2022, the UCA filed its non-disclosure agreement agreeing that its legal counsel and its subject matter experts will not disclose any highly confidential information to “any individual, third party, or intervenor in this proceeding other than those individuals specifically authorized to review such highly confidential information.”

27. The Company notes that highly confidential protections have been afforded similar documents that were found to be highly confidential in a prior ECA review proceeding.

28. Under Rule 1100(b) CCR 723-1, information filed with the Commission is presumed to be a public record, including (I) annual reports; (II) rates, terms and conditions for regulated services; (III) tariffs and price lists; (V) aggregate data regarding informal consumer complain information; (VI) all compliance filings that the Commission has ordered to be filed as public record; (VIII) performance reports demonstrating compliance or lack of compliance with Commission rules or decisions; and (X) safety inspection reports or information filed with the Commission or compiled by Commission staff. Rule 1101 provides the procedure and requirements for filing and seeking highly confidential protections for a document. Rule 1101(c) governs records that are presumed to be public under Rule 1100(b) and allows an entity or person to file a motion requesting highly confidential protection for records in accordance with Rule 1101(b). Rule 1100(d) specifies that the party requesting highly confidential protection carries the burden of proof to establish the need for highly confidential protection.

29. Under Rule 1101(b), 4 CCR 723-1, a motion seeking highly confidential protection:

- (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
- (II) shall state the specific relief requested and the grounds for seeking the relief;
- (III) shall advise all other parties of the request and the subject matter of the information at issue;
- (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;
- (V) shall be accompanied by a specific form of nondisclosure agreement requested;
- (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
- (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.

30. Public Service provides a detailed description of the information for which it seeks protection and a showing that it deserves and needs highly confidential protection. Its Motion for Extraordinary Protection also includes two proposed forms of nondisclosure agreement for legal counsel and for experts in the subject matter. It has also provided the affidavit of Jack W. Ihle, the Director of Regulatory and Strategic Analysis for the Company, identifying the individuals within Public Service that have access to the information. A public version of the subject information with the allegedly highly confidential information redacted, and an unredacted highly confidential version of those documents were filed contemporaneously with the Company's pre-filed direct testimony, its Application in this proceeding, and its Motion for Extraordinary Protection.

31. Public Service has thus satisfied each of the requirements of Rule 1101(b) and has shown good cause for highly confidential protection of the identified information. Accordingly, Public Service’s Motion for Extraordinary Protection will be granted.

**V. PROCEDURAL SCHEDULE**

32. On October 31, 2022, the Company conferred with the parties and filed a proposed, unopposed procedural schedule to govern this proceeding.

33. Public Service, CIEA, UCA, and Trial Staff unanimously agree to the following proposed procedural schedule:

<b>Answer Testimony</b>	December 20, 2022
<b>Rebuttal Testimony</b>	January 24, 2023
<b>Settlement</b>	February 9, 2023
<b>Hearing</b>	February 22-23, 2023
<b>Statements of Position</b>	March 3, 2023

34. Although the Company did not specify the manner of hearing, the undersigned will schedule a hybrid hearing. The parties may request a different hearing format, if desired.

35. The ALJ notes that the Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission’s hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

36. If the parties prefer a fully remote hearing or a fully in-person hearing, a motion to amend the hearing location and format may be filed.

37. The Parties are further advised and are on notice that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the Parties to be familiar with and to comply with these rules. The rules are available on the Commission's website (<http://www.dora.colorado.gov/puc>).

38. The parties are also on notice that failure to appear at the scheduled evidentiary hearing may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application.

39. The ALJ has reviewed the parties' proposed schedule and finds that it is reasonable. It will be adopted, as order below.

40. **Informal Video-Conference Practice Session:** The ALJ will hold an informal practice video-conference session if requested by any party to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

41. The parties may contact a Commission Legal Assistant by email at [casey.federico@state.co.us](mailto:casey.federico@state.co.us) and [alejandro.aguirrerhode@state.co.us](mailto:alejandro.aguirrerhode@state.co.us), to schedule an informal practice video-conference session.

42. The parties will receive information and a link to participate in the informal practice session by email.

## **VI. ORDER**

### **A. It Is Ordered That:**

1. Pursuant to § 40-6-109.5(1), C.R.S. (2022), the applicable period for issuance of a Commission decision is extended by an additional 130 days, up to and including May 23, 2023.

2. The Motion to Intervene of the Colorado Independent Energy Association (CIEA) filed on August 31, 2022, is granted. CIEA is a party to this proceeding.

3. The Motion for Extraordinary Protection of Highly Confidential Information filed by Public Service Company of Colorado on August 1, 2022, is granted.

4. A **hybrid** hearing is scheduled as follows:

Date: **February 22 and 23, 2023**

Time: **9:00 a.m.**

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

**METHOD:** In-person and by videoconference using Zoom at the link to be provided to counsel and the parties via email prior to the hearing.

**Optionally**, any party may participate remotely by joining a video conference using Zoom at the link provided to the established parties in an e-mail prior to the scheduled hearing, as addressed above.<sup>2</sup>

5. The parties and witnesses may not distribute the Zoom link and access code to anyone not participating in the remote hearing.

6. No later than **Tuesday, December 20, 2022**, Intervenors — Trial Staff of the Colorado Public Utilities Commission, the Colorado Office of Utility Consumer Advocate, and the Colorado Independent Energy Association — shall each file and serve any answer testimony.

7. No later than **Tuesday, January 24, 2023**, any party desiring to file rebuttal or cross-answer testimony shall file the same.

8. The parties having agreed to a settlement deadline, any settlement agreement among any parties must be filed on or before **Thursday, February 9, 2023**.

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<sup>2</sup> Instructions for using the Zoom videoconferencing platform are provided in Attachment A to this Decision.

9. The parties must file their respective Statements of Position no later than **Friday, March 3, 2023**.

10. **Video-Conference Participation.** Counsel for the parties, parties, and witnesses may attend in person or participate in the evidentiary hearing by videoconference using the Zoom platform.

11. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing may accommodate remote participation by videoconference, all evidence must be presented electronically. Each party is responsible for ensuring that they and their respective witnesses: (a) have access to all pre-filed exhibits; and (b) can download and view documents available from box.com during the hearing.

12. **The ALJ will hold an informal Zoom practice session upon request.**

13. **Instructions for Preparation and Presentation of Exhibits at Hearing:** In addition to other requirements of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (e.g., Rule 1202 regarding pre-filed testimony), detailed additional instructions governing the preparation and presentation of exhibits at the hearing are set out in Attachment B to this order, which is incorporated into and made part of this order.

14. **Instructions for Remote Hearings Via Zoom:** Detailed instructions governing participation in and procedures for remote hearings conducted via Zoom are set out in Attachment A to this order, which is incorporated into and made part of this order.

15. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ALENKA HAN

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Administrative Law Judge

ATTEST: A TRUE COPY

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