

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0140E

IN THE MATTER OF THE VERIFIED APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR THE ROCKY MOUNTAIN 325 MW SOLAR PLUS 200 MW STORAGE GENERATION FACILITY AND THE 335 MW ARROYO 2 SOLAR GENERATION FACILITY.

**INTERIM COMMISSION DECISION ADDRESSING THE
UNOPPOSED MOTION TO APPROVE A
COMPREHENSIVE SETTLEMENT AGREEMENT,
MOTION TO VACATE EVIDENTIARY HEARING AND
RECOMMENDED PROCEDURES AND REQUEST FOR
WAIVER OF RESPONSE TIME AND REQUIRING
SETTLEMENT TESTIMONY**

Mailed Date: June 12, 2024

Adopted Date: June 12, 2024

I. BY THE COMMISSION

A. Statement

1. Through this Decision, we grant the Motion to Vacate Evidentiary Hearing that Public Service Company of Colorado (Public Service or Company), Trial Staff of the Commission (Staff), and the Office of the Utility Consumer Advocate (UCA) (the Settling Parties) filed on June 7, 2024, and defer ruling on the Unopposed Motion to Approve a Comprehensive Settlement Agreement (Motion to Approve Settlement Agreement) that the Settling Parties also filed on June 7, 2024.

2. As set forth below, we decline to adopt, at this time, the Settling Parties' recommended procedures for issuing written questions but direct Public Service, and invite any

other party, to file testimony addressing the Unopposed Comprehensive Settlement Agreement (Settlement Agreement) by June 26, 2024.

3. Finally, we waive response time to the Motion to Vacate Evidentiary Hearing.

B. Discussion

4. In this Proceeding, Public Service seeks approval of a Certificate of Public Convenience and Necessity (CPCN) to construct, own and operate the Rocky Mountain Project and a CPCN to construct, own and operate the Arroyo 2 Project. The Rocky Mountain project is a 325 MW solar plus storage facility, and the Arroyo 2 project is a 335 MW solar facility.¹

5. In Decision No. C24-0293-I,² we established the parties to this Proceeding, set a procedural schedule, and scheduled an *en banc* evidentiary hearing for June 17, 2024.

6. On June 7, 2024, the Settling Parties filed the Motion to Vacate Evidentiary Hearing and the Motion to Approve Settlement Agreement. The Settlement Agreement was filed contemporaneously with the Motion to Approve Settlement Agreement. Public Service, Staff, and the UCA each join the Settlement Agreement. The remaining parties, the Colorado Energy Consumers (CEC) and Climax Molybdenum Co. (Climax) do not oppose, but do not join, the Settlement Agreement.

7. The Settling Parties state that Settlement Agreement is intended to resolve all issues that have been raised or could have been raised in this Proceeding. Given the Commission's busy schedule and in the interest of administrative efficiency, the Settling Parties request the Commission vacate the evidentiary hearing scheduled for June 17, 2024, as well as the remaining

¹ Decision No. C24-0210, issued April 3, 2024, p. 3.

² Issued May 6, 2024.

procedural schedule.³ The Settling Parties represent that Climax and CEC do not oppose vacating the hearing and remaining procedural schedule.⁴

8. The Settling Parties recommend that, in lieu of an evidentiary hearing, the Commission submit any written questions regarding the Settlement Agreement to the parties and establish a deadline for responses to those questions. They argue that this process for written questions from the Commission has been successful in previous proceedings.⁵

9. The Settling Parties further request that the Settlement Agreement be approved without modification and request that the Commission waive response time to both the Motion to Vacate Evidentiary Hearing and the Motion to Approve Settlement Agreement.

C. Findings and Conclusions

10. For the reasons set forth by the Settling Parties, we grant the Motion to Vacate Evidentiary Hearing. Given the unopposed comprehensive Settlement Agreement, an evidentiary hearing is no longer necessary in this instance. Accordingly, we vacate the remaining procedural schedule, including the June 17, 2024, evidentiary hearing.⁶

11. We note that the Settling Parties did not include in their Motion to Vacate Evidentiary Hearing a corresponding request to admit into the record all pre-filed testimony and exhibits. The Commission encourages the parties in this instance to move to admit all pre-filed testimony and exhibits and file witness affidavits for all the testimony.

12. Moreover, although the Settling Parties bear the burden of proof to show the Settlement Agreement should be approved because it is just and reasonable and in the public

³ Motion to Vacate Evidentiary Hearing, p. 6.

⁴ Motion to Vacate Evidentiary Hearing, p. 2.

⁵ Motion to Vacate Evidentiary Hearing, p. 6.

⁶ At this time, we decline to adopt the Settling Parties' recommendation to issue written questions regarding the Settlement Agreement.

interest, the Settling Parties have not filed settlement testimony nor indicated that they plan to do so. Therefore, we direct Public Service, and invite any other party, to file testimony supporting the Settlement Agreement by June 26, 2024, that explains why the settlement is in the public interest and why it is a just and reasonable resolution of the issues in this Proceeding. The Settlement Testimony should also include, among other things, whether there is any opposition to a Commission finding that the noise and electromagnetic field levels for the Rocky Mountain and Arroyo 2 projects are reasonable and require no further mitigation. If any intervenor elects to file Settlement Testimony, such filings would also be due by June 26, 2024.

13. Finally, pursuant to Rule 1308(c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, the Commission grants the request to waive response time to the Motion to Vacate Evidentiary Hearing. In contrast, because we defer ruling on the merits of the Settlement Agreement, we find that waving response time to the Motion to Approve Settlement Agreement is unnecessary.

II. ORDER

A. It Is Ordered That:

1. The Motion to Vacate Evidentiary Hearing that Public Service Company of Colorado (Public Service or Company), Trial Staff of the Commission, and the Office of the Utility Consumer Advocate filed on June 7, 2024, is granted, consistent with the discussion above.

2. Public Service shall file testimony addressing the Unopposed Comprehensive Settlement Agreement by June 26, 2024, consistent with the discussion above.

3. The request to waive response time to the Motion to Vacate Evidentiary Hearing is granted.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 12, 2024**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners