

Decision No. C24-0699-I

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

PROCEEDING NO. 21A-0141E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2021 ELECTRIC RESOURCE PLAN AND CLEAN ENERGY PLAN.

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**INTERIM COMMISSION DECISION ADDRESSING  
COMMENTS OF THE OFFICE OF THE UTILITY  
CONSUMER ADVOCATE AND DIRECTING PUBLIC  
SERVICE COMPANY OF COLORADO TO FILE  
ADDITIONAL INFORMATION**

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Issued Date: September 26, 2024

Adopted Date: September 25, 2024

**I. BY THE COMMISSION**

**A. Statement**

1. Through this Decision, the Commission addresses the Comments that the Office of the Utility Consumer Advocate (“UCA”) filed on September 23, 2024. In addition, we elaborate on concerns raised in Decision No. 24-0678-I, issued September 19, 2024, and direct Public Service Company of Colorado (“Public Service” or the “Company”) to provide information regarding the availability of additional wind bids and address identified concerns regarding thermal projects. Public Service and the parties are also encouraged to comment on a proposed process to increase competitive tension.

**B. Background**

2. On September 6, 2024, Public Service Company of Colorado (“Public Service” or the “Company”) filed a Motion to Approve CEP Delivery Plan, Establish Procedural Schedule,

for Variances from Certain Commission Rules and Decisions, and an Unopposed Request for Shortened Response Time regarding Procedural Schedule (“CEP Delivery Motion”).

3. On September 19, 2024, the Commission issued Decision No. C24-0678-I. Among other things, Decision No. C24-0678-I established a procedural schedule for consideration of the CEP Delivery Motion. Under the procedural schedule, Public Service must file certain supplemental information by October 4, 2024, and the deadline for intervenor responses is October 11, 2024.<sup>1</sup> The established procedural schedule anticipates adjudication of the Company’s request to extend the Plains End power purchase agreement (“PPA”).<sup>2</sup>

4. In addition to the procedural schedule, Decision No. C24-0678-I establishes certain discovery rights for the Company and the intervenors. The Commission directed that for discovery requests on the Company’s filings, responses shall be due within seven business days, while any party responses to the Company’s discovery requests are due within five business days.<sup>3</sup>

5. As part of the initial procedures established in Decision No. C24-0678-I, the Commission set a deadline of September 23, 2024, for parties to raise procedural concerns, including whether the Company’s proposal to extend the Plains End PPA should be heard in a separate proceeding.<sup>4</sup>

6. On September 23, 2024, the UCA filed Comments regarding the Plains End PPA and the discovery procedures established in Decision No. C24-0678-I. Climax Molybdenum Company (“Climax”) joins and supports the Comments, and Colorado Energy Consumers (“CEC”) support a portion of the Comments. In its Comments, UCA requests that the Plains End

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<sup>1</sup> Decision No. C24-0678-I, ¶ 28.

<sup>2</sup> Decision No. C24-0678-I, ¶ 27.

<sup>3</sup> Decision No. C24-0678-I, ¶ 30.

<sup>4</sup> Decision No. C24-0678-I, ¶ 27.

PPA remain in this Proceeding for expediency purposes and because resolution of the Plains End PPA will help clarify the near-term capacity forecast. Substantively, UCA recommends that the Commission direct Public Service to investigate whether the Company should purchase the Plains End unit, asserting that this could potentially result in savings for consumers. While Climax supports UCA's statements regarding the Plains End PPA, CEC reserves its position on whether to include Plains End in this Proceeding.<sup>5</sup>

7. UCA also requests the Commission require Public Service to respond to discovery requests within five calendar days, as opposed to the seven business days the Commission established in Decision No. C24-0678-I. UCA argues that with seven business days for the Company to respond, intervenors would not receive the Company's discovery responses on its supplemental filing prior to October 11, 2024, which is when intervenors must file their responses. Climax and CEC both support UCA's discovery request.

### **C. Discussion**

#### **1. UCA Comments**

8. UCA raises a legitimate argument that allowing Public Service seven business days to respond to discovery requests will not allow intervenors to incorporate discovery regarding the Company's supplemental information into their responses. Public Service must provide certain supplemental information by Friday, October 4, 2024, which is less than seven business days before intervenor responses are due on October 11, 2024. Thus, for those discovery requests relating to information that is newly disclosed on October 4, 2024, we grant UCA's request and require the Company to respond within five calendar days. However, for discovery requests made prior to October 4, 2024, or which do not relate to information that is newly disclosed

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<sup>5</sup> UCA Comments, p. 1.

on October 4, 2024, the Commission denies UCA's request and maintains the seven business day response period that Public Service initially proposed and which the Commission adopted in Decision No. C24-0678-I. This approach helps ensure that parties can more fully investigate any new information disclosed on October 4, 2024, and incorporate that investigation into their responses. At the same time, this approach does not unnecessarily restrict the time the Company has to respond to all other discovery requests.

9. As for the UCA's request regarding Plains End, at this time we decline to require Public Service to investigate purchasing the Plains End unit. We do not, however, preclude UCA from using the established procedures and discovery rights to investigate and advocate for this option.

## **2. Increasing Competitive Tension**

10. In Decision No. C24-0678-I, we invited stakeholders to comment on how to better maintain competitive tension in any process the Commission adopts allowing price flexibility.<sup>6</sup> In this Decision, we further elaborate on this concept and direct Public Service to provide additional information in an effort to ensure that a process maintaining competitive tension could be successfully implemented.

11. To begin, we invite the Company and parties to comment on the following approach to maintain competitive tension. Under this approach, every winning bidder in the approved Alternative Portfolio, every bidder on the backup list, and every bidder on the supplemental backup list would have a one-time opportunity to adjust their pricing by December 31, 2024. For those winning bidders in the approved Alternative Portfolio who are prepared to move forward with their projects at the original bid price, the Commission would ask the Company to pursue execution of

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<sup>6</sup> Decision No. C24-0678-I, ¶ 24.

a PPA as quickly as reasonably possible. If bidders have concerns that the Company is not engaging in PPA negotiations in a commercially reasonable manner, including such that Commission directives may be violated, we would encourage them to quickly inform the Commission.

12. Any other bid in the approved Alternative Portfolio, backup list, or supplemental backup list, including those winning bids that request a higher price, would compete to ensure that customers get the highest value, lowest cost projects, consistent with the general rank-ordering approach in Appendix P to the Company's 120-Day Report. Out of this competition, a revised rank ordering of projects would be developed that fully reflects any requested price increases. As such, the winning projects included in the Alternative Portfolio that are seeking a price increase would not have any presumption that they will win again.

13. We ask that Public Service comment on the above proposed approach in its supplemental filing due on October 4, 2024, and that interested intervenors comment on this proposed approach in the responses that are due October 11, 2024.

14. While it appears there is a reasonably deep and diverse pool of solar, solar plus storage, and standalone storage bids to ensure meaningful competitive tension, we are concerned with the lack of available wind backup bids. The Commission recognized this issue earlier in Decision No. C24-0161,<sup>7</sup> where we encouraged the Company "to refresh the backup bid portfolio for wind projects."<sup>8</sup> In response to Decision No. C24-0161, on April 12, 2024, Public Service filed a Notice Regarding Updated List of Projects and Updated List of Backup Bids. In this Notice, the Company did not identify any additional wind backup projects, stating that the remaining available

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<sup>7</sup> Issued March 6, 2024.

<sup>8</sup> Decision No. C24-0161, ¶ 96.

wind bids “have a significant step change in cost from the wind bids in the current Approved Portfolio and backup bid pool.”<sup>9</sup>

15. Given the 10-12 percent price increase the Company appears to be requesting for the utility-owned wind bids in the Approved Portfolio,<sup>10</sup> we find it appropriate to reconsider the Company’s conclusion to not identify additional wind backup bids. Thus, the Company shall examine the wind bids that are not currently included in the backup bid portfolios to see if any of those projects might have become competitive given the anticipated price increases of the winning wind projects. Public Service shall report to the Commission if any additional wind bidders are interested in competing in an expanded supplemental backup pool as soon as possible but no later than in the Company’s reply, which is due on October 25, 2024. As part of this reporting, the Company must specifically address the viability of Bids 562, 1086, and 265.

16. We have similar concerns regarding the paucity of available thermal bids and particularly PPA thermal bids. In its testimony, Public Service notes that the Company is already speaking to the developer of Bid 384 (a PPA thermal project). We direct the Company to reach out to that bidder and report back to the Commission on whether that bidder would be willing to submit current bids with updated pricing and timing in four different configurations assuming one, two, three, and four combustion turbine units.

17. Similarly, we find it appropriate to ask for more information regarding Bid 514 (a 30 MW existing PPA thermal unit). The Company states that both Bid 514 and Bid 510 have failed, but with respect to Bid 514 this seems to be in the context of the Company’s conclusion that Bid 514 “is no longer a viable option to replace the capacity of Bid 0235.”<sup>11</sup> Even if Bid 514

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<sup>9</sup> Notice, p. 4.

<sup>10</sup> Hr. Ex. 166 (Ihle), p. 46 (Table JWI-ST-1).

<sup>11</sup> Hr. Ex. 166 (Ihle), p. 82.

cannot by itself replace Bid 0235, Public Service argues that the Company has a “continuing (and growing) capacity need” over the next several years.<sup>12</sup> Thus, the Company shall provide more analysis on whether Bid 514 could eventually help support the Company’s expected future capacity shortfall.

18. Finally, Public Service is directed to expressly address whether Bid 517 and Bid 538 (both PPA thermal bids) are available. It appears that Bid 517 and Bid 538 are variations of other thermal bids the Company already addresses in Mr. Ihle’s testimony, but the Company shall address this expressly.

19. As with our directive regarding additional backup wind projects, Public Service shall address the Commission’s concerns regarding thermal resources as soon as possible but no later than in the Company’s reply, which is due on October 25, 2024.

## **II. ORDER**

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

1. For those discovery requests relating to information that Public Service Company of Colorado (“Public Service” or the “Company”) newly discloses on October 4, 2024, the Company shall have five calendar days within which to respond; for discovery requests made prior to October 4, 2024, or which do not relate to information that is newly disclosed on October 4, 2024, Public Service shall have seven business days within which to respond, consistent with the discussion above.

2. Consistent with the discussion above, we deny the request from the Office of the Utility Consumer Advocate to require Public Service to investigate purchasing the Plains End unit.

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<sup>12</sup> Hr. Ex. 166 (Ihle), p. 113.

3. Public Service is encouraged to comment on the proposed approach to maintain competitive tension set forth above in the Company's supplemental filing due on October 4, 2024; interested intervenors are encouraged to comment on this proposed approach in the responses that are due October 11, 2024.

4. Consistent with the discussion above, Public Service shall report to the Commission if any additional wind bidders are interested in competing in an expanded supplemental backup pool—and must specifically address the viability of Bids 562, 1086, and 265—as soon as possible but no later than in the Company's reply, which is due on October 25, 2024.

5. Consistent with the discussion above, Public Service shall address the Commission's concerns regarding thermal resources as soon as possible but no later than in the Company's reply, which is due on October 25, 2024.



6. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN MEETING AND COMMISSIONERS' WEEKLY MEETING  
September 25, 2024.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners