

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

PROCEEDING NO. 24A-0442E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF  
COLORADO FOR APPROVAL OF ITS 2024 JUST TRANSITION SOLICITATION.

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**INTERIM COMMISSION DECISION ADDRESSING  
OMNIBUS MOTION, IN PART; REQUIRING FILINGS;  
ADDRESSING PRELIMINARY SCHEDULE; ADDRESSING  
DISCOVERY PROCEDURES; REFERRING DISCOVERY  
DISPUTES AND FURTHER MOTIONS FOR  
EXTRAORDINARY PROTECTION; REQUIRING  
ADDITIONAL CONFERRAL; AND SETTING  
PREHEARING CONFERENCE**

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Issued Date: December 23, 2024

Adopted Date: December 18, 2024

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## I. BY THE COMMISSION

### A. Statement

1. On October 15, 2024, Public Service Company of Colorado (“Public Service” or the “Company”) filed a Verified Application of Public Service Company of Colorado for Approval of its 2024 Just Transition Solicitation (“Application”). Concurrently with the filing of the Application, Public Service filed an Omnibus Motion for Extraordinary Protection of Highly Confidential Information and for Partial Waiver of Rules 3606(b), 3612(a), 3618(b)(I), 3613(a) and 3613(d) in the Commission’s Rules Regulating Electric Utilities, 4 *Colorado Code of Regulations* (“CCR”) 723-3, and Waiver of Rule 3608(c)(III)-(IV) (“Omnibus Motion”).

2. By this Decision, the Commission grants, in part, the Company’s Omnibus Motion, consistent with the discussion below. The majority of the rule waiver requests are deferred to a future decision. Regarding the request for extraordinary protection, the unopposed requests regarding categories 1 through 14 are granted. Public Service shall make a filing with the Commission clarifying its request for information described in category 15, consistent with the discussion below, as soon as possible and preferably no later than December 26, 2024.<sup>1</sup>

3. In addition, this Decision adopts the Company’s proposed discovery processes, consistent with Commission Rules, and refers all future discovery disputes and motions for extraordinary protection an Administrative Law Judge.

4. By this Decision, we direct the Company to include results of the conferral regarding the Colorado Department of Health and Environment (“CDPHE”) as a neutral verifier in a filing due to the Commission by January 17, 2025.

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<sup>1</sup> The Commission aims to address this remaining issue as soon as reasonably possible. Given the schedule of the Commission’s upcoming CWMs, a prompt filing from the Company will assist in this endeavor.

5. Also by this Decision, we require Staff of the Public Utilities Commission (“Staff”) to make a filing addressing the Independent Transmission Analyst (“ITA”) scope of work no later than December 31, 2024.

6. Finally, through this Decision we direct the Company to provide an updated procedural schedule to the Commission by January 17, 2025, and set a supplemental direct deadline of January 31, 2025. Through separate order, the Commission directs specific categories of supplemental direct. Conferral on updating and confirming the remainder of the schedule due January 17, 2025, shall include consideration of any adjustments needed given supplemental direct, any initial cross-docket information inclusions, CDPHE neutral verification considerations, and the potential scope of work of the ITA. We also set a prehearing conference for January 23, 2025, which may be vacated if the preceding filings prove satisfactory.

## **B. Background**

7. By Decision No. C24-0872-I, the Commission set this Proceeding for hearing before the Commission *en banc* and established parties. Additionally, among other things, the Commission, with a deadline of December 4, 2024: (1) set the response deadline to Public Service’s Omnibus Motion, including the embedded Motion for Extraordinary Protection; (2) directed Public Service to confer with the parties regarding whether there will be a neutral verifier of emissions reductions evaluating Public’s Service’s Application and, if so, whether that role will be filled by CDPHE and to include this information in a conferral report; (3) required Staff to address the issue of developing a scope of work for hiring an independent transmission analyst, as required by Decision No. C24-0052 in Proceeding No. 21A-0141E; (4) directed parties to file proposals for supplement direct, including addressing concerns regarding

cross-docket coordination among this Proceeding and upcoming proceedings that may require synchronization amongst the Company and the parties; and (5) required the Company to file a conferral report addressing discovery procedures and a supplemental direct deadline proposal.

8. Several parties filed responses to the Company's Omnibus Motion. Staff, the Colorado Independent Energy Association ("CIEA"), and the Colorado Solar and Storage Association, the Solar Energy Industries Association, and Advanced Energy United (jointly, the "Clean Energy Industry") filed responses on December 4, 2024.

9. In response to the Commission's decision and accompanying directives, the Company filed a Response to Decision No. C24-0872-I ("Response") on December 4, 2024.

10. Several other parties filed responses to the Commission's request for supplemental direct proposals, which will be addressed by separate order.

### **C. Motion for Extraordinary Protection**

11. Public Service seeks extraordinary protection for 15 categories of documents and information described in the Application. In support of its request for extraordinary protection for the Highly Confidential Information, Public Service provides the following information pursuant to Rule 1101(b), 4 CCR 723-1.

12. These 15 categories include the following: (1) owned unit and power purchase agreement ("PPA") delivered fuel costs; (2) owned unit and PPA heat rate curves; (3) owned unit and PPA discrete maintenance schedules; (4) owned unit and PPA discrete forced outage rates; (5) owned unit and PPA historical hourly generation data or wind speed data; (6) owned unit and PPA hourly marginal system or unit data; (7) black start unit designation; (8) hourly market price data; (9) any information protected by the confidentiality clause of a PPA; (10) fully resolved

modeling database; (11) standard modeling output files; (12) bid information, including project name, identifying information, and pricing; (13) any customer-specific information, including data that does not comport with the Commission's data privacy rules and the "15/15 Rule" (*i.e.*, Rule 1101, *et. seq.*, Rule 3025, *et. seq.*, and Rule 3033, *et. seq.*); (14) any other information protected by a confidentiality clause of an existing non-disclosure agreement or similar agreement where the Company is contractually committed to keep certain information confidential, and the Company is bound to maintain such confidentiality, absent an order from this Commission to the contrary; and (15) other bid information contained in bid packages (from the Company and other entities) not otherwise listed in item 12 above or as confidential or public information in Attachment A.<sup>2</sup>

13. For the first 12 categories of information, the Company requests an order limiting party access to a "reasonable number of attorneys" and a "reasonable number of subject matter experts," representing a party to this Proceeding and subject to such individuals executing a non-disclosure agreement ("NDA"), consistent with Rule 3614(b), 4 CCR 723-3. With respect to the remaining categories, the Company seeks a waiver of Rule 3614(b) and requests the Commission limit access to only the Commission, Staff, the Office of the Utility Consumer Advocate ("UCA"), and the Independent Evaluator ("IE").<sup>3</sup>

14. Public Service contends the disclosure of each of the 15 categories of highly confidential information could cause irreparable harm to the Company's trading operations, ability to solicit cost-effective resources, and its customers who maintain a high expectation of privacy in their information and energy-related data.<sup>4</sup> Specifically, the Company asserts that if information

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<sup>2</sup> Public Service Omnibus Motion at pp. 3-4.

<sup>3</sup> *Id.* at pp. 5-6.

<sup>4</sup> *Id.* at p. 6.

on owned unit and PPA delivered fuel costs, heat rate curves, maintenance schedules, discrete forced outage rates, historical hourly generation or wind speed data, hourly marginal system or unit data, black start unit designation, hourly market price data, and/or any information protected by the confidentiality clause of a PPA were released, such disclosure could seriously harm the Company's traders who buy and sell energy in short term markets to reduce the Company's energy costs.<sup>5</sup> Additionally, Public Service asserts the Commission has granted the Company's requested highly confidential protections to a substantively similar list of information in the 2021 Electric Resource Plan ("ERP")/Clean Energy Plan ("CEP") proceeding.<sup>6</sup>

15. Regarding the bid information described in category 12, the Company states that, consistent with Rule 3613, such information should be treated as highly confidential until the completion of the resource acquisition process. Regarding category 15 – other bid information contained in bid packages (from the Company or other entities) not otherwise listed in item twelve or as confidential or public information in Attachment A – Public Service requests access to this information be limited to the Commission, Staff, UCA, and the IE. The Company asserts that while certain data used to evaluate bids and proposals will be made publicly available when the costs of various resource portfolios are reports, the actual bids themselves contain a wealth of proprietary, commercially sensitive data.<sup>7</sup> The Company states this is especially true for bids that are not selected, as such projects may be rebid to Public Service or another utility in a subsequent solicitation. Moreover, the Company continues, bidders generally have significant investment in

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<sup>5</sup> *Id.* at pp 6-7.

<sup>6</sup> *Id.* at p. 7 (citing Decision No. C21-0343-I issued in Proceeding No. 21A-0141E (June 11, 2021)).

<sup>7</sup> *Id.* at p. 8.

acquiring their sites, equipment, financing, and other project contracts and do not want their competitors to know their trade secrets.<sup>8</sup>

16. CIEA filed a response to Public Service's Omnibus Motion on December 4, 2024, and requests the Commission reject the Company's category 15 as vague, sweeping, and unjustified in the record to be limited to the Commission, Staff, UCA, and the IE.<sup>9</sup> CIEA contends the Company's description of category 15 is not sufficiently detailed to distinguish the information from other types of information that parties will be able to review, has no representative sample provided except for a generalized reference to PPA provisions, and has no showing of how the category requires protection above the highly confidential NDA.<sup>10</sup>

17. CIEA argues this issue is further confused by Public Service's simultaneous request that PPA provisions protected by confidentiality provisions can be disclosed to parties in category 9, while other undescribed provisions cannot be disclosed under category 15.<sup>11</sup> Similarly, CIEA asserts that since data from bids is already set to be accessible under category 12's "bid information," there is no distinguishable purpose for category 15 under the Company's own descriptions.<sup>12</sup>

18. CIEA therefore requests category 15 be rejected entirely. Alternatively, should the Commission approve category 15 as a separate category, CIEA argues it should not be elevated above highly confidential protection such that parties should not be denied access to its review under the highly confidential NDA process, given Public Service's request for a conforming bid policy.

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<sup>8</sup> *Id.*

<sup>9</sup> CIEA Response at p. 5.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at p. 6.

<sup>12</sup> *Id.* at p. 7.

19. Additionally, with respect to category 9, CIEA requests the Commission clarify that “[a]ny information protected by the confidentiality clause of a PPA” applies only to executed and in effect PPAs. With respect to Category 12, CIEA requests the Commission clarify that “bid information” includes all information required by Commission Rule 3613(j)-(k).<sup>13</sup>

20. The Clean Energy Industry filed a response to Public Service on December 4, 2024, and objects to the Company’s proposed treatment of information in category 15. The Clean Energy Industry does not dispute that the information described in category 15 meets the definition of highly confidential, and asks the Commission to treat it as such, without the additional requested protections, to preserve competitive tension among bidders in the solicitation process.<sup>14</sup>

21. The Clean Energy Industry argues the Public Service’s novel request is inconsistent with the Company’s own prior treatment of similar bid-related information.<sup>15</sup> The Clean Energy Industry argues the Company’s request would entirely bar the review of important information relating to the actual bidding process, which it asserts would raise due process and transparency concerns. Additionally, the Clean Energy Industry states that, as a non-bidder in the JTS solicitation, it possesses the requisite degree of separation to execute the proper NDA and access the information without jeopardizing the competitive process.<sup>16</sup>

22. When presented with a motion for extraordinary protection of claimed highly confidential information, the Commission determines whether the information is, in fact, highly confidential, the level of extraordinary protection that may be warranted, and to whom access should be granted.

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<sup>13</sup> *Id.* at pp. 4-5.

<sup>14</sup> Clean Energy Industry Response at pp. 4-5.

<sup>15</sup> *Id.* at p. 5.

<sup>16</sup> *Id.* at p. 8.



23. The operative language in Rule 1101(b)(IV), 4 CCR 723-1, which concerns motions requesting highly confidential protection, requires that the motion:

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 ....

24. We find persuasive the reasoning and arguments in the Company's requests regarding categories 1 through 14. For these uncontested categories of information, Public Service states good cause to grant the relief sought under Rule 1101 and we agree that the categories of information the Company seeks to protect are consistent with data and information afforded similar protections in past ERP proceedings.

25. Regarding the Company's contested request regarding category 15, we agree with the parties that the Company's description is lacking.<sup>17</sup> We therefore direct the Company to file additional information on category 15 and state clearly why it should be approved as a separate category and subject to heightened protections. This filing is due as soon as possible and preferably no later than December 26, 2024. The Commission will aim to address this remaining request *en banc* as soon as possible.

26. In addition, moving forward, we encourage the Company to endeavor to be more thorough and discriminating in its requests for extraordinary protection, especially as it relates to significant proceedings before the Commission. While we understand the need for heightened

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<sup>17</sup> As CIEA notes, we understand that "[a]ny information protected by the confidentiality clause of a PPA" applies only to *executed* and *in effect* PPAs. "Other bid information" could for example include certain draft PPA language, but the Company should clarify its request further. Similarly, in clarifying its requested category 15, it should necessarily address whether "bid information" includes all information required by Commission Rule 3613(j)-(k), or if it intended certain of this information as part of category 15. This information will assist in identifying if category 15 "other bid information" should be treated consistent with information contained in both categories 9 and 12, or if it deserves further heightened protections as proffered by the Company initially.

protections, public discussion and transparency is imperative as well. Company filings should be clear and concise on information contained as confidential or highly confidential, and should endeavor as always to include corresponding and clear public information to the extent possible for parties, the Commission, and public consideration.

#### **D. Requests for Waiver of Commission Rules**

27. In its Omnibus Motion, the Company also requests waiver of Commission Rules 3606(b),<sup>18</sup> 3612(a),<sup>19</sup> 3618(b)(I),<sup>20</sup> 3613(a),<sup>21</sup> 3613(d),<sup>22</sup> and 3608(c)(III)-(IV).<sup>23</sup>

28. The Company seeks a partial waiver of Rule 3606(b)'s requirement to present a range of forecasts. The Company states that, in its Direct Case, it presents detailed information on its Low Load forecast and Base Case forecast; but did not develop a high forecast scenario to be used in modeling in this proceeding.<sup>24</sup>

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<sup>18</sup> Rule 3606(b) requires the utility to develop and justify a range of forecasts of coincident summer and winter peak demand and energy sales that its system may reasonably be required to serve during the planning period, including a base case, high, and low forecast scenarios.

<sup>19</sup> Rule 3612(a) requires that prior to filing an ERP, the utility shall file for Commission approval of an IE jointly proposed by the utility, Staff, and UCA.

<sup>20</sup> Rule 3618(b)(I) requires that, 30 days after bids are received in response to the Request for Proposal(s) ("RFP") in its Phase II competitive acquisition process, the utility shall report certain information, including the identity of the bidders and the number of bids received; the quantity of MW offered by bidders; a breakdown of the number of bids and MW received by resource type; and, a description of the prices of the resources offered.

<sup>21</sup> Rule 3613(a) requires that within 45 days of the utility's receipt of bids in its Phase II competitive acquisition process, the utility shall provide notice in writing by e-mail to the owner or developer of each potential resource stating whether its bid is advanced to computer-based modeling to evaluate the cost or the ranking of the potential resource, and, if not advanced, the reasons why the utility will not further evaluate the bid using computer-based modeling.

<sup>22</sup> Rule 3613(d) requires that within 120 days of the utility's receipt of bids in its Phase II competitive acquisition process, the utility shall file a report with the Commission, describing the cost-effective resource plans that conform to the range of scenarios for assessing the costs and benefits from the potential acquisition of increasing amounts of renewable energy resources, and other required bid evaluation information (the "Phase II Report," and referred to as the "120-Day Report" in previous ERPs).

<sup>23</sup> Rule 3608(c)(III)-(IV) provides that for each transmission line or facility identified in Rule 3608(b), pertaining to transmission facilities that could be placed into service during the resource acquisition period, Public Service shall provide information on: (1) injection capacity and locations for generation facilities and (2) injection capacity and locations for energy storage systems.

<sup>24</sup> Public Service Omnibus Motion at p. 15.

29. The Company is also seeking a waiver of Rule 3612(a)'s timing requirement to file for Commission approval of an IE jointly proposed by Staff and UCA, until two weeks prior to the Phase I hearing. Since the Company has not yet filed a motion seeking approval of a specific mutually agreed upon IE, it believes that Trial Staff and the UCA along with the Company will benefit from having additional time to conduct these discussions.<sup>25</sup>

30. Additionally, the Company requests partial waivers of Rules regarding Phase II procedural activities deadlines. Specifically, the Company seeks a waiver of Rule 3618(b)(I)'s timing requirement and an extension of time from 30 days to 45 days after bids are received to file the required bid information. The Company explains that itself, the Commission, and stakeholders have all experienced increasingly complex resource planning proceedings over the course of the past several ERP cycles with an unprecedented number of submitted bids resulting in portfolios with several gigawatts of new resources and billions in new clean energy-related investments across the State of Colorado. The Company expects the 2024 JTS to be similarly complex and requests an extension of this deadline.<sup>26</sup>

31. The Company is also seeking a waiver of Rule 3613(a)'s timing requirement and an extension of time from 45 days to 60 days after receipt of bids to provide the required notice, and Rule 3613(d)'s timing requirement and an extension of time from 120 days to 180 days after receipt of bids to file the required Phase II Report.<sup>27</sup>

32. Lastly, Public Service is requesting a waiver of Rule 3608(c)(III)-(IV)'s requirements regarding injection capacity information, arguing that providing a fixed injection capability to any location on the system is misleading given the dynamic nature of the Company's

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<sup>25</sup> *Id.* at pp. 16-17.

<sup>26</sup> *Id.* at pp. 19-20.

<sup>27</sup> *Id.* at p. 20.

variable system. The Company explains that the injection capability determined for a given location in the transmission system is highly dependent on the assumed generation and storage dispatch pattern and therefore the maximum injection capability corresponds only to the most favorable system condition expected to occur.<sup>28</sup>

33. Staff filed a response to Public Service’s Omnibus Motion on December 4, 2024, stating several objections with the Company’s waiver requests.

34. Staff opposes the Company’s request for a partial waiver of Rule 3606(b), and states the Company should present a full set of load forecasts consistent with the rule’s directives. Staff contends that if the Company’s “base case” is actually a high load case and the Company’s “low load” case is actually the base case, the Company should reference the forecasts as such. Similarly, Staff asserts that if the “base case” represents the Company’s best estimate of the load that will actually show up on the system, then a high load case should be developed and presented per Rule 3606(b).<sup>29</sup>

35. Staff states it does not oppose the Company’s request for a waiver of the timing requirement in Rule 3612(a).

36. Staff opposes the Company’s request for a waiver of the timing requirement in Rules 3618(b)(I), 3613(a) and 3613(d) at this time. Staff notes that the Company is seeking—at the beginning of Phase I—the extension of certain deadlines in the Phase II process including the timing of filing the 30-day report, the notification that bids have been advanced to modeling, and the filing of the Company’s 120-day report. Staff contends it is unclear at this time what recommendations, modeling, scenarios, bids, and processes will be developed through the

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<sup>28</sup> *Id.* at pp. 21-22.

<sup>29</sup> Staff Response at pp. 2-3.

Phase I process of the ERP, and thus it is premature to extend these Phase II deadlines. While Staff states it may ultimately be appropriate to extend such deadlines, there is no good reason to do so at this time.<sup>30</sup>

37. Staff also opposes the Company's request for a waiver of the timing requirements in Rule 3613(e)-(h). Similar to the request above, Staff sees this as premature. Staff recommends, should the Commission decide to grant the requested extensions at this time, that the other Phase II deadlines not just be pushed out but that additional time be reflected in each step. Staff requests that whatever extension and additional time is allowed for the Company to conduct its Phase II analysis, the same extension and similar additional time be granted for the remaining Phase II procedural steps.<sup>31</sup>

38. Staff states it does not oppose the Company's requested waiver for Rules 3608(c)(III)-(IV) for the reasons stated in the Company's motion. However, Staff notes that the Company does have an on-going responsibility to describe the dynamic nature of its transmission system, how it is modeled, how it changes under different scenarios, etc., and expects the Company to provide complete explanations and responses to discovery requests reasonably calculated to better understand transmission transfer capabilities.<sup>32</sup>

39. CIEA also opposes several of the Company's requested waivers. In its response, CIEA argues the Commission should deny the Company's requests for waivers related to Phase II procedural deadlines (Rules 3618(b)(I), 3613(a), 3613(d), and 3613(e)-(h)). CIEA states it is premature, and procedurally inappropriate given that the Proceeding is only at the outset of Phase I, to grant waivers in Phase II before Public Service has litigated its Phase I ERP.

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<sup>30</sup> *Id.* at p. 3.

<sup>31</sup> *Id.* at pp. 3-4.

<sup>32</sup> *Id.* at p. 5.

Moreover, CIEA contends this request is setting up a major potential disadvantage to IPP bidders, and potentially a new CEP Delivery Plan problem well before the next Phase II.<sup>33</sup>

40. Additionally, CIEA states the appropriate place in the Phase II process for best and final pricing to occur may be after approval of a “short list” by the Commission, or at least after a short list is proposed by the Company in its 120-Day Report.<sup>34</sup> CIEA also requests that the Commission deny the Company’s request for waiver of Rule 3608(c)(III)-(IV) and order that the Company follow the ERP rules with respect to the integration of transmission in generation planning. CIEA asserts that just because information may be inexact does not mean that it should not be provided at all.<sup>35</sup>

41. In its response, the Clean Energy Industry requests the Commission deny the Company’s Request for partial waiver of Rule 3606(b), which requires the utility to develop and justify a range of forecasts of coincident summer and winter peak demand and energy sales that its system may reasonably be required to serve during the planning period, including base case, high and low forecast scenarios. They argue it is imperative that the Commission continue to ensure that Public Service has considered all scenarios contemplated in Rule 3606(b) – low, base case, and high – and has a plan to meet possible high load scenarios in the future.<sup>36</sup>

42. The Clean Energy Industry also requests the Commission deny the Company’s request for partial waivers of the Phase II procedural activity deadlines. They assert the Company’s requested extensions are significant and will create real consequences throughout the solicitation

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<sup>33</sup> CIEA Response at pp. 8-10.

<sup>34</sup> *Id.* at p. 11.

<sup>35</sup> *Id.* at p. 12.

<sup>36</sup> Clean Energy Industry Response at pp. 9-11.

process, and argue the Commission should refrain from slowing down the Phase II process before it even begins.<sup>37</sup>

43. Regarding the Company's request to waive Rule 3606(b), we grant this request, in part, and deny it, in part. Consistent with Staff's response, we agree that the base and low forecasts are likely more appropriately the "high" and "base" forecasts. Additionally, as discussed in November and confirmed through further Commission deliberation, we are requiring the Company to provide a "lowest low" forecast through supplemental direct testimony.<sup>38</sup> We therefore clarify that the Company will continue to be required to provide a range of forecasting pursuant to Rule 3606(b), and the Commission's supplemental direct requirements. This range in forecasting included or directed at this stage is intended to assist in further considerations and determinations, including as parties advocate for the appropriate presentations with regard to forecasting to be considered further in Phase II of this Proceeding.

44. In addition, we grant the Company's request to waive Rule 3612(a)'s requirement to file for Commission approval of an IE jointly proposed by Staff and UCA until two weeks prior to the Phase I hearing. We agree with Public Service that this unopposed extension will provide the Company, Staff, and UCA additional needed time to confer and establish an IE for this Proceeding.

45. Regarding the Company's remaining waiver requests – including those addressing Phase II procedural deadlines – we decline to affirmatively address them at this time. We agree with the parties that making determinations on these deadlines, at this early stage in Phase I of the Proceeding, is premature, and additional testimony and considerations are needed to properly

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<sup>37</sup> *Id.* at p. 11.

<sup>38</sup> The Decision addressing supplemental direct testimony is forthcoming.

consider these issues. We therefore defer any decision addressing these requested waivers to a future date.

46. As discussed in our corresponding supplemental direct considerations, it is of concern that the Company is already preemptively seeking extensions. We encourage the Company and parties to seek efficiencies and avoid delays as this Proceeding moves forward.

#### **E. Discovery Procedures**

47. In its Response, the Company submits that the ordinary rules governing discovery should apply to this Proceeding, and that all parties either agree or take no position on the Company's proposal regarding discovery.<sup>39</sup> The Company notes that the parties already have begun to conduct discovery.

48. We confirm the discovery processes proposed by the Company, consistent with Commission rules.

49. All future discovery disputes and motions for extraordinary protection, with the exception of concluding consideration of category 15 of the Company's embedded, initial request discussed above, will be referred to an Administrative Law Judge.

#### **F. CDPHE and Neutral Verifier Engagement**

50. The Company states that additional emissions verification is not required by statute, as the JTS is not a CEP filed pursuant to Senate Bill ("SB") 19-236, and that CDPHE verification of the Company's workbooks in the 2021 ERP/CEP fulfilled the requirements of the statute.<sup>40</sup> However, the Company states that should the Commission desire a non-CEP verification, the Company would be willing to provide a workbook to CDPHE for verification.

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<sup>39</sup> Public Service Response at p. 5.

<sup>40</sup> Public Service Response at p. 14.



51. Public Service states it has not yet reached out to CDPHE to inquire whether they have the resources to engage in a verification process for this proceeding. The Company states it has conferred with the parties, and all parties either agree that CDPHE is the appropriate verification entity (should the Commission choose to require one) or do not oppose/take no position on this proposal. The Company asserts that Western Resource Advocates, Southwestern Energy Efficiency Project, and Colorado Communities for Climate Action state that they support Public Service providing an emission verification workbook, and Staff requested the Company include the following statement: “Staff’s position is that the Commission should require an independent emissions verification in this proceeding under § 40-2-125.5(7), C.R.S., to be performed by CDPHE.”<sup>41</sup>

52. While Staff and Public Service appear to disagree on the best route to take in establishing a process for CDPHE’s engagement in this Proceeding, the Company states it is willing to undergo a non-CEP verification process with CDPHE should the Commission request it. We agree with Staff and the parties that the Proceeding would benefit from a verification of emission reduction targets and that CDPHE is the proper entity to do so.

53. Accordingly, we direct the Company and Staff to confer with CDPHE to determine whether a neutral verification review per § 40-2-125.5(7), C.R.S., is possible and establish timelines for the overall and remaining schedule. We understand that CDPHE will not be involved in this Proceeding per § 40-2-125.5(4)(b), C.R.S., as it was in the 2021 ERP/CEP proceeding; nevertheless, CDPHE’s ongoing engagement to confirm verification of progress towards the state’s aggressive emission reduction goals is important and appreciated.

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<sup>41</sup> *Id.*

54. The Company shall include results of the conferral with CDPHE in its schedule report, due to the Commission by January 17, 2025, and discussed further below.

**G. Independent Transmission Analyst Scope of Work**

55. Staff states it has met individually with representatives from UCA, the Colorado Energy Office (“CEO”), the Company, Accion, and the Colorado Electric Transmission Authority and various other experts in transmission planning. As of this time, Staff, UCA, and CEO have not yet mutually agreed on a scope of work for the ITA. Staff states the scope of work for the ITA is intended to cover the following three tasks: (1) general support for the development of analytical capabilities regarding transmission planning; (2) specific support for this JTS Proceeding; and (3) specific support for the DMUP application. Staff states it is modeling the process for hiring the ITA largely off the engagement of the Independent Engineer in the Colorado Power Pathways proceeding<sup>42</sup>, where it worked with the Company to develop the scope of work for the Independent Engineer.<sup>43</sup>

56. Staff states the Company has provided Staff with a list of potential ITA contractors that are likely to satisfy Staff’s listed staffing and qualification considerations. Staff asserts it intends to work with the Company to vet and interview the potential contractors, while continuing to work with UCA, CEO, and the Company to develop the appropriate scope of work, and hopes to file the scope of work in this Proceeding by the end of December 2024, at which time it will provide an update on the contracting of the ITA.<sup>44</sup>

57. Consistent with Staff’s representations, we require Staff to make a filing addressing the ITA and a proposed scope of work no later than December 31, 2024.

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<sup>42</sup> Proceeding No. 21A-0096E.

<sup>43</sup> Staff Response at pp. 8-9.

<sup>44</sup> *Id.* at p. 9.

58. As it finalizes the scope of work for submission, we direct Staff to consider statements made in the supplemental direct filings regarding the ITA scope of work, as well as any other emphasis the Commissioners have included regarding the transmission considerations in this Proceeding. Specifically, by way of example, based on party discussions addressing supplement direct, Staff should address the additional wind generation injection that might be made possible through dynamic line ratings (“DLR”) and to provide the cost of implementing DLR.

#### **H. Procedural Schedule Conferral**

59. In its Response, Public Service filed a proposed procedural schedule for this Proceeding. The schedule is based on the assumption that supplemental direct testimony will be due on January 31, 2024, and includes evidentiary hearing dates on June 2 through June 6, 2025, with a hold June 9 and June 10 on an as-needed basis. The Company states its proposed schedule provides a balanced timing of answer testimony, rebuttal and cross-answer testimony, time for potential settlement in advance of the hearing, and time for the Commission to deliberate following the hearing and issue its decision.<sup>45</sup>

60. In alignment with the Company’s proposed schedule, we set the deadline to file supplemental direct for January 31, 2025. Through separate order, we detail the specific inclusions required in supplemental direct testimony, the majority of which include confirmation of the Commission’s initial discussion topics from November 20, 2024. Parties continue to be encouraged to pursue areas of relevant interest and concern through discovery and the normal course of testimony throughout this proceeding.

61. Regarding the remainder of the schedule, rather than adopt the proposed schedule, we direct the Company to confer further with the parties and confirm an updated schedule that

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<sup>45</sup> Public Service Response at p. 3.

includes consideration of the above discussion regarding conferral with CDPHE and the ITA scope of work. We further understand and appreciate the Company's representation that it will continue to include information from other ongoing proceedings as pertinent or necessary through the normal course of this Proceeding. However, further conferral should also include and address if any initial, preliminary information or process should include adjustment given large Company filings made or anticipated in December 2024, including for example the Company's Distribution System Planning filing made recently in Proceeding No. 24A-0547E. Following conferral, an updated schedule and result of further conferral shall be filed with the Commission by January 17, 2025.

62. In addition, we set a prehearing conference for January 23, 2025. If the Company's January 17, 2025, filing is satisfactory, we may vacate the prehearing conference at a preceding Commissioners' Weekly Meeting.

63. Lastly, we note that the Company's proposed hearing dates conflicts with the Commissioners' existing schedules. We ask the Company to confer with parties and propose new hearing dates, including potentially the week of June 16, 2025.

## **II. ORDER**

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

1. The Omnibus Motion for Extraordinary Protection of Highly Confidential Information and for Partial Waiver of Rules 3606(b), 3612(a), 3618(b)(I), 3613(a) and 3613(d), in the Commission's Rules Regulating Electric Utilities, 4 *Colorado Code of Regulations* 723-3 and Waiver of Rule 3608(c)(III)-(IV) ("Omnibus Motion") filed by Public Service Company of

Colorado (“Public Service”) on October 15, 2024, is granted, in part, and denied, in part, consistent with the discussion above.

2. Public Service shall make a filing with the Commission clarifying its request for extraordinary protection of information contained in category 15, consistent with the discussion above, as soon as possible, and preferably by December 26, 2024.

3. Public Service’s proposed discovery processes are adopted, consistent with the discussion above.

4. All future discovery disputes and motions for extraordinary protection are referred to an Administrative Law Judge, consistent with the discussion above.

5. Public Service shall include the results of the conferral regarding the Colorado Department of Health and Environment in a filing due to the Commission by January 17, 2025.

6. Staff of the Public Utilities Commission shall make a filing addressing the Independent Transmission Analyst scope of work no later than December 31, 2024.

7. Public Service shall provide an updated procedural schedule proposal and further conferral report, consistent with the discussion above, no later than January 17, 2025.

8. Public Service shall file supplement direct testimony with the Commission no later than January 31, 2025.

9. A remote prehearing conference is scheduled as follows:

DATE: January 23, 2025

TIME: 9:00 a.m.

PLACE: By video conference using Zoom at a link to be provided to the parties by email.

10. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
December 18, 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

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TOM PLANT

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Commissioners