

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0530E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS 2016 ELECTRIC RESOURCE PLAN
AMENDMENT REGARDING THE TARGETED 2019 SOLAR REQUEST FOR
PROPOSALS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING MOTION TO APPROVE
SETTLEMENT AND GRANTING APPLICATION**

Mailed Date: April 23, 2020

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I. STATEMENT

1. On September 30, 2019, Public Service Company of Colorado (Public Service or Company) filed its Verified Application for approval of its 2016 Electric Resource Plan (ERP)

Amendment Regarding the 2019 Solar Request for Proposals (Application). Specifically, Public Service seeks Commission approval to replace approximately 200 MW of solar resources with replacement solar bids. The Commission originally approved the initial bids as part of the Preferred Colorado Energy Plan Portfolio in Decision No. C18-0761 in Proceeding No. 16A-0396E issued September 10, 2018 (Phase II Decision) for the reasons stated in the Application.

2. On October 31, 2019, the Colorado Office of Consumer Counsel (OCC) filed its Notice of Intervention of Right, Entry of Appearance, and Request for Hearing. The OCC is an intervenor as of right and a party in this proceeding. The OCC listed a series of issues they wish to investigate.

3. On October 31, 2019, the Colorado Independent Energy Association (CIEA) filed its Motion to Intervene. As a non-profit corporation and trade association of independent power producer (IPP) member companies, CIEA states that its members routinely participate in requests for proposals associated with the ERP processes of public utilities to bring their projects to market in Colorado. CIEA asserts that it has an interest in monitoring the present proceeding to ensure a fair and transparent bidding and bid evaluation process. CIEA further asserts that it and its members have a specific interest in advocating for Commission decisions and rules that safeguard competitive bidding of renewable resources and market participation by IPPs. Additionally, CIEA states that this proceeding will directly and substantially impact the tangible and pecuniary interests of its IPP members because those members currently operate, or seek to operate, electric generating resources in Colorado.

4. On October 31, 2019, Western Resource Advocates (WRA) filed its Petition for Leave to Intervene. WRA states that it is a nonprofit conservation organization dedicated to

protecting the land, air, and water of the West and that it was actively engaged in Proceeding No. 16A-0396E, regarding Public Service's 2016 ERP. WRA asserts that the Commission's decision in this proceeding will directly impact its tangible interest in environmental protection, and no other party will adequately represent its interests in this matter.

5. On November 4, 2019, Trial Staff of the Commission (Staff) timely filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1403(b), and Request for Hearing. The intervention is of right, and Staff is a party in this matter.

6. On November 6, 2019, by minute order, Proceeding No. 19A-0530E was referred to an Administrative Law Judge.

7. On December 6, 2019, by Decision No. R19-0976-I, the intervention of CIEA, was granted, the intervention of WRA was denied, and a prehearing conference was scheduled for December 19, 2019.

8. On December 30, 2019, by Decision No. R19-1043-I, the prehearing conference was vacated and a procedural schedule was adopted.

9. On April 3, 2020, Public Service filed its Settlement Agreement and Unopposed Motion to Approve Settlement Agreement, Vacate Procedural Schedule and Request of Waiver for Response Time (Unopposed Motion).

10. In the Unopposed Motion, Public Service stated that the parties have reached a settlement in the above captioned proceeding and requested that the evidentiary hearing scheduled for April 7 and 8, 2020 be vacated. Public Service also stated that supporting testimony would be filed by April 10, 2020.

11. On April 7, 2020, by Decision No. R20-0226-I, the evidentiary hearing was vacated.

12. On April 10, 2020, Public Service and Staff filed testimony in support of the Settlement Agreement.

II. DISCUSSION

A. Testimony and Terms of Settlement Agreement

13. The Settlement Agreement, attached to this Decision as Attachment A, explains that the Parties negotiated a resolution of all disputed issues in this proceeding. The Parties assert that the application, as modified by the terms of the Settlement Agreement, is in the public interest and supported by the testimony of Public Service and Staff. Below is a summary of some of the terms agreed upon by the Parties

B. Acquisition of the Company's Preferred Replacement Bids

14. The Settling Parties agree that the Company should acquire the Company's Preferred Replacement Bids consisting of two individual projects: (1) a 100 MW solar with 50 MW/200 MWh storage project located in El Paso County (Bid 056); and (2) a 113 MW solar project located in Pueblo County (Bid 035).

C. Back-Up Bids

15. In the event the Company determines through bilateral negotiations that either or both of the selected bidders of the solar projects that comprise the Preferred Replacement Bids (*i.e.*, Bid 056 and Bid 035) are unable to deliver the projects with similar terms and conditions as bid, the Company will pursue acquisition of its proposed back-up bids (*i.e.*, Bid 018 and Bid 106).

D. Failure of Preferred Replacement and Back-Up Bids

16. If neither the Preferred Replacement Bids nor any of the back-up bids are ultimately acquired, the Settling Parties agree any resulting capacity and/or energy needs of the system shall be addressed through the 2021 Electric Resource Plan process.

E. Testimony in Support of the Settlement

17. The testimony filed by Public Service in support of the Settlement Agreement establishes that the settlement is in the public interest.

18. The testimony filed by Staff in support of the Settlement Agreement establishes that the settlement is in the public interest and fully explains why Staff now supports the replacement and backup bids.

III. FINDINGS AND CONCLUSIONS

19. The parties have the burden of proving by a preponderance of the evidence that the settlement is just and reasonable. In reviewing the terms of the Settlement Agreement, the ALJ applied the Commission's direction and policy with respect to a review of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

20. The Commission has an independent duty to determine matters that are within the public interest. *See Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

21. The undersigned ALJ has reviewed the Direct, Rebuttal and Settlement Testimony filed by Public Service; Answer and Settlement testimony of the intervenors; and the recitations of the Parties in the Unopposed Motion and Settlement Agreement. The ALJ has duly considered the positions of all parties in this matter.

22. Based on the entire record, the ALJ finds that approval of the application, as modified by the terms of the Settlement Agreement, is in the public interest.

23. The ALJ further finds that the parties have established by a preponderance of the evidence that the Settlement Agreement is just, is reasonable, and should be accepted by the Commission.

IV. ORDER

A. The Commission Orders That:

1. The Joint Motion to Approve Settlement Agreement filed by Public Service Company of Colorado (Public Service) on April 3, 2020 is granted, consistent with the discussion above.

2. The Settlement Agreement filed by Public Service on April 3, 2020 and attached to this Decision as Attachment A, is approved, consistent with the discussion above

3. The Application for approval of the 2016 Electric Resource Plan Amendment Regarding the 2019 Solar Request for Proposals filed by Public Service on September 30, 2019 is granted consistent with the discussion above.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above

5. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

6. Response time to exceptions shall be shortened to seven days.

7. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission

upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S

8. If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed

9. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge