

(Decision No. C93-1384){PRIVATE }

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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IN THE MATTER OF THE INTEGRATED)
RESOURCE PLAN OF PUBLIC SERVICE) DOCKET NO. 93I-098E
COMPANY OF COLORADO, 1225 - 17TH)
STREET, DENVER, COLORADO 80202.) PROCEDURAL ORDER

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Mailed Date: November 5, 1993
Adopted Date: October 15, 1993
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STATEMENT

BY THE COMMISSION:

This matter comes before the Colorado Public Utilities Commission ("Commission") to consider a number of procedural issues raised in Decision No. C93-1138-I. A joint¹ prehearing conference was held October 15, 1993, at which these issues were discussed by the parties and the Commission. Having considered the comments of the parties, a procedural order will be entered as set forth below.

DISCUSSION

A. Consolidation of IRP dockets.

The first issue raised by Decision No. C93-1138-I is whether the Commission should consolidate the three pending integrated resource planning ("IRP") dockets relating to Public Service Company of Colorado ("Public Service") (Docket No. 93I-098E), Tri-State

¹ The prehearing conference considered three pending integrated resource planning dockets: Public Service Company of Colorado (Docket No. 93I-098E); Tri-State Generation and Transmission Association (Docket No. 93I-095E); and WestPlains Energy, Inc. (Docket No. 93I-096E).

Generation and Transmission Association ("Tri-State") (Docket No. 93I-095E), and WestPlains Energy, Inc. ("WestPlains") (Docket No. 93I-096E). As an initial matter, WestPlains and Tri-State point-out that a hearing on the utility's final IRP plan is discretionary under Rule 8 of the Commission's Electric Integrated Resources Planning ("Rules"), 4 CCR 723-21. They urge the Commission not to set the plans for hearing automatically without having parties first indicating that they have some objection to the plan. On the other hand, a number of parties stated that they desired a hearing on each plan. The parties argue, and this Commission agrees, that this is the first time the Commission has received IRP plans and, therefore, it is appropriate to conduct hearings to fully explore them.

The parties appear unanimous in their opposition to having a consolidated hearing for all the plans. The Commission agrees. The need for a clear and understandable record far outweighs any benefit to be derived from consolidating the record. Moreover, if one of the chief benefits of consolidation is the opportunity to consider all three plans before issuing a decision, that can be accomplished by holding separate hearings fairly close in time. Therefore, the Commission will conduct separate hearings for each docket, with WestPlains being heard first in Pueblo, followed by Tri-State in Denver, and then Public Service in Denver. The date, time, and place for these hearings will be set by separate order.

B. Testimony.

Rule 8 of the Commission's rules on Integrated Resource Planning is silent on the issue of written prefiled testimony when the Commission elects to proceed to hearing. Some parties suggest that because the plans are extensive, direct testimony would not be particularly helpful. Instead, they suggest the utility file "testimony" that simply identifies witnesses that Public Service will offer to testify to the various parts of the IRP plan. Intervenor would then prefile written "answer" testimony. Written rebuttal or cross-rebuttal testimony would then be prefiled by the utility and parties.

The Commission agrees that extensive direct testimony and exhibits would not be particularly helpful in light of the magnitude of the documents already filed by Public Service, but testimony identifying the documents and knowledgeable persons to testify about them would be helpful. By separate order the Commission will set dates for prefiling of Public Service's testimony of this nature and a list identifying witnesses for the utility's direct case, together with the sections of the final plan that the witness is qualified to address, and prefiling dates for testimony and exhibits for answer, rebuttal, and cross-rebuttal testimony and exhibits.

C. Discovery.

Rule 8 is also silent on the issue of discovery after the final plan is submitted. The Commission agrees with a number of parties which have expressed the need for discovery. While the preliminary plan stage and the informal participation that is provided for in the IRP rules hopefully has eliminated some, if not most, of the need for discovery, there is no reason that discovery should be eliminated once the final plan is offered. Therefore, the Commission will authorize discovery as provided for in the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

The utilities request that there be some limitations on discovery, including a cutoff to discovery prior to hearing. The Commission declines to adopt limitations on discovery, other than a discovery cut off date. The Commission has approved discovery cutoff dates in the past in other dockets and will do so here. Specifically, written discovery directed at Public Service shall be propounded no later than the date answer testimony is due. Written discovery directed at answer testimony shall be propounded no later than the date rebuttal and cross-rebuttal testimony is due. Written discovery directed at rebuttal and cross-rebuttal shall be propounded no later than 20 days before the date of hearing.

The parties are expected to attempt to resolve any discovery disputes informally. If the parties cannot resolve their disputes

informally, the matter can be raised by proper pleading. The dispute will be assigned to an administrative law judge who shall resolve the dispute expeditiously.

D. Notice.

The fourth issue raised in Decision No. C93-1138-I is the issue of whether the utility should issue additional notice of the filing of its final plan. Public Service states that it desires to issue additional notice to make sure that persons who were not interested in participating in the preliminary planning discussions but who are interested in intervening when the final plan is offered are given notice of the filing of the final plan. Public Service argues that this avoids any contention later on that interested persons were not given adequate notice of the filing of the final plan. Other parties argue that the notice which opened the investigation is sufficient.

In order to avoid any possible argument regarding defective notice in these proceedings, the Commission shall require that Public Service provide additional notice in *The Denver Post* and *Rocky Mountain News* in the form and frequency set forth in section 40-3-104(1)(c)(A) C.R.S. (1993). The Commission shall also provide notice to all persons who have indicated an interest in energy matters.

Certain parties request the notice contain not only notice that the plan has been filed, but also summarize Public Service's three-year

action plan, state how an interested person may intervene, and how to obtain a copy of the plan or where to review it. The Commission concludes that these requests are appropriate and directs Public Service to file with the Commission on or before November 1, 1993, a proposed notice which addresses these issues.

E. Incorporating into this docket the special open meetings regarding transmission and renewable energy resources.

The parties are generally in agreement that the Commission should not conduct its special open meetings regarding transmission and renewable energy as on-the-record proceedings to be incorporated into this docket. These special open meetings are typically not on-the-record proceedings and are not structured to comport with hearing requirements under title 40, article 6, C.R.S. (1993). For these reasons, the Commission shall not incorporate these special open meetings into the record in this proceeding.

F. Time necessary to complete the hearings.

The parties are directed to file on November 1, 1993, procedural schedules which state their desires regarding prefiling dates, prehearing conference dates, hearing dates, and any other procedural matter that the individual party believes the Commission should address.

G. Energy Policy Act of 1992 Issues.

The Land and Water Fund of the Rocky Mountain States and the Office of Energy Conservation jointly raise the issue of whether the

Commission should address in this docket the requirements of section 111(a)(7) of the national EAct. Section 111(a)(7) requires state regulatory commissions to consider whether to adopt standards that require that: (1) electric utilities employ integrated resource planning; (2) the requirements of the standard be updated on a regular basis; (3) the public have an opportunity to participate and comment on the plan; and (4) the utility be required to implement the plan.

The Commission finds and concludes that this EAct standard was met when the Commission adopted its Integrated Resource Planning Rules, 4 CCR 723-21. These rules require the electric utility to employ integrated resource planning. See Rules 1.01 and 1.02. Every three years Public Service must file updated IRP plans for review and approval by the Commission. See Rule 3.01. Public participation is expressly provided for at all stages of the planning process. See Rules 1.02, 8.01 and 8.02. Finally, a utility that does not implement the plan as approved may not be able to recover the cost of its investments and expenses incurred that are inconsistent with the approved plan. See Rules 8.03(a) and (e).

Therefore, the Commission concludes that nothing further is required to address section 111(a)(7) of EAct. However, the Commission will address in this docket sections 111(b) and 115(d) of EAct regarding small business impacts.

H. Recently Filed Applications for Certificates of Public Convenience and Necessity.

The Staff indicated at the prehearing conference that Public Service has filed two applications for certificates of public necessity and convenience regarding re-powering Fort St. Vrain and a wind power project in Wyoming. Staff raises the question of what affect the IRP process will have on these applications and, conversely, what affect these applications will have on the IRP process. The Commission concludes that these matters, including the question of whether the applications should be consolidated with this docket, should be raised by separate motions.

I. Public Service's request for waiver.

Public Service filed a motion requesting a waiver from certain portions of Integrated Resources Planning rules concerning forecast information. Specifically, Public Service requests a waiver of Rules 4.01(b), 4.01(f), and 4.03(d). The first two rules require Public Service to develop certain energy and demand forecasts for major customer classes. Public Service states that it currently is unable to do so, but that it is working on models and data that will enable it to meet this requirement in the next filing. Staff responded by noting that Public Service has provided the information with respect to the energy component. Public Service states that its request relates only to a waiver of the demand component of Rules 4.01(b) and (f).

With respect to Rule 4.03(d), Public Service states that it does not have the ability to engage in end use forecasting which is necessary to fulfill this rule. No objections to the motion were made, other than the Staff's concerns which are resolved by Public Service's clarification. The Commission will grant the motion as clarified.

J. Staff's Motion for Clarification of the Commission's Protective Order.

The Staff filed a motion requesting clarification of the Commission's protective order entered in this docket and the applicability of the order to audit requests by the Staff. Staff takes the position that the protective order, and particularly that portion of the order that states that responses by qualified co-generation facilities to a Request For Information ("RFI") issued by Public Service need not be disclosed unless the facilities consent to the disclosure, does not apply to audit requests by the Staff. Public Service argues that the Staff does not have audit authority once it intervenes in a case and that the protective order applies to the Staff.

The Commission finds, for purposes of this case, that the Staff has the statutory authority to issue audit requests to public utilities. See, e.g., sections 40-6-107 and 40-3-110, C.R.S. (1993).

The statutes do not condition this authority on whether the Staff is a party to a docket. The Commission further concludes that the protective order in this case relates only to discovery requests,

not audit questions from the Staff. On the issue of the specific audit request submitted by the Staff, the Commission instructs the Staff to complete its audit requests associated with this docket no later than the cutoff date set for discovery.

Finally, businesses that submitted bids to Public Service should realize that this Commission may inquire into all aspects of Public Service's regulated business activities. Indeed, this Commission has long been involved in overseeing Public Service's acquisition of energy from qualifying facilities. These businesses may be under a misapprehension that the information would not be so disclosed. Therefore, Public Service shall have 7 days to inform businesses that have submitted confidential information to Public Service in response to the RFI of this decision, that the information is to be provided to the Staff pursuant to an audit request. The information shall be produced to the Staff after that period of time.

THEREFORE THE COMMISSION ORDERS THAT:

1. The Commission shall hold a hearing on Public Service Company of Colorado's final integrated resource plan. The hearing will be held in Denver, Colorado, at a date, time, and place set by subsequent order.

2. The parties shall submit by November 1, 1993, proposed procedural schedules regarding prefiling dates, prehearing

conferences, hearing dates, and other procedural information that they believe relevant to these proceedings.

3. Public Service Company of Colorado shall file testimony identifying the documents and containing a list of witnesses and the sections of Public Service's IRP final plan which the witnesses are qualified to address at hearing. Direct, answer, rebuttal and cross-rebuttal testimony shall be written and prefiled. Dates for submission of the testimony and exhibits shall be determined by later order.

4. Any written discovery directed to Public Service Company of Colorado regarding the plan shall be propounded no later than the date answer testimony is due. Written discovery directed at intervenors' testimony shall be propounded no later than the date rebuttal and cross-rebuttal testimony is due. Written discovery directed at rebuttal and/or cross-rebuttal testimony of any party shall be propounded no later than 20 days before the date of hearing. Parties shall first attempt to resolve discovery disputes informally. Discovery disputes that cannot be so resolved shall be assigned to an administrative law judge who shall expeditiously resolve the dispute.

4. Public Service Company of Colorado shall provide additional notice pursuant to section 40-3-104, C.R.S. (1993). The notice shall

address the issues discussed above, including EPCRA requirements relating to small businesses. Public Service shall submit its proposed notice to the Commission for approval on or before November 1, 1993.

5. Public Service Company of Colorado's request for waiver of those portions of Rules 4.01(b) and (f) relating to demand, and Rule 4.03(d) in its entirety is granted. This waiver applies to this filing only and does not apply to plans Public Service must file in the future.

6. Public Service Company of Colorado shall have 7 days to inform businesses that have submitted confidential information to Public Service in response to Public Service's RFI of this decision. After that time, Public Service shall produce the information requested in audit requests to the Staff.

This Order is effective on its Mailed Date.

ADOPTED IN PREHEARING CONFERENCE October 15, 1993.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER VINCENT MAJKOWSKI
ABSENT.