

Decision No. C04-0710

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-214E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS 2003 LEAST-COST RESOURCE PLAN.

DOCKET NO. 04A-215E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR AN ORDER APPROVING A REGULATORY PLAN TO SUPPORT THE
COMPANY'S 2003 LEAST-COST RESOURCE PLAN.

DOCKET NO. 04A-216E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR
THE COMANCHE UNIT 3 GENERATION FACILITY.

**ORDER GRANTING INTERVENTIONS,
CONSOLIDATING PROCEEDINGS, AND
SETTING PREHEARING CONFERENCE**

Mailed Date: June 25, 2004
Adopted Date: June 22, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of: petitions to intervene in Docket Nos. 04A-215E and 04A-216E; the amended petition to intervene of Ms. Leslie Glustrom in Docket Nos. 04A-214E, 04A-215E, and 04A-216E; motions to consolidate in Docket Nos. 04A-214E, 04A-215E, and 04A-216E filed by Public Service Company of Colorado (Public Service or the Company); the request for the Commission to rule

on Public Service's motion for waiver of the 250 MW limit in Rule 3610(b) as a preliminary matter filed by the Colorado Independent Energy Association (CIEA); motion to dismiss Docket No. 04A-216E filed by CIEA; the motion for admission *Pro Hac Vice* for Mary L. Will as counsel for PacifiCorp; and for the setting of a prehearing conference.

2. Ms. Glustrom filed a petition to intervene in Docket Nos. 04A-214E, 04A-215E, and 04A-216E on June 10, 2004. On June 18, 2004, the Commission orally ruled against the petition to intervene of Ms. Glustrom in Docket No. 04A-214E.¹ Ms. Glustrom then filed an amended petition to intervene in Docket Nos. 04A-214E, 04A-215E, and 04A-216E. We construe Ms. Glustrom's amendment as a motion to allow an amended petition for intervention out-of-time in Docket Nos. 04A-215E and 04A-216E. We waive response time to the amended petition. In the amended petition, Ms. Glustrom provides a detailed description of issues that she intends to address. While Ms. Glustrom clearly demonstrates a personal interest in these proceedings, she is not represented by an attorney,² and appears to not fully understand the legal constraints of our adjudicated proceedings. We are concerned that her primary issue (climate change) is outside the scope of our Least-Cost Planning (LCP) Rules. We find that Ms. Glustrom's amended petition for intervention does not meet the "substantial interest" required for intervenor status. A citizen's concern, however fervently expressed, does not equate with "substantial interest," which is essentially a standing inquiry. We note that the Office of Consumer Counsel (OCC) is statutorily charged to represent residential/customer interests from a rate perspective. Consequently, we deny Ms. Glustrom's intervention in Docket

¹ The written decision from the June 18, 2004 prehearing conference in Docket No. 04A-214E has not yet been issued.

² We are not finding that a person must have an attorney to be afforded intervenor status. (We merely point out that the lack of attorney advice may be the reason why she believes she can provide evidence on an issue outside the scope of this proceeding.)

Nos. 04A 215E and 04A-216E. Her intervention in Docket No. 04A-214E has been previously denied, and we now affirm that ruling. We point out that Ms. Glustrom may provide public comment in these cases. Specifically, Ms. Glustrom may submit written public comment into these dockets for Commission consideration, and may provide oral comment in the public comment hearings to be conducted in these cases. The purpose of the public comment hearings is for concerned citizens, like Ms. Glustrom, to provide comment to the Commission.

3. Petitions to intervene in Docket No. 04A-215E were filed by the Colorado Governor's Office of Energy Management and Conservation, Holy Cross Energy, Colorado Renewable Energy Society, City and County of Denver, Western Resource Advocates, City of Boulder, North American Power Group, Ltd., Colorado Mining Association, Environment Colorado, Calpine Corporation, LS Power Associates, L.P., Climax Molybdenum Company and CF&I Steel, LP, Regents of University of Colorado-Boulder, Baca Green Energy, LLC and Prairie Wind Energy, LLC, Colorado Energy Consumers Group, Southwest Energy Efficiency Project, Colorado Coalition for New Energy Technologies, and CIEA.

4. Petitions to intervene in Docket No. 04A-216E were filed by Colorado Governor's Office of Energy Management and Conservation, Holy Cross Energy, Colorado Renewable Energy Society, City and County of Denver, Western Resource Advocates, City of Boulder, North American Power Group, Ltd., Arkansas River Power Authority, Aquila, Inc., Colorado Mining Association, Environment Colorado, Calpine Corporation, LS Power Associates, L.P., Climax Molybdenum Company and CF&I Steel, LP, Regents of University of Colorado-Boulder, Baca Green Energy, LLC and Prairie Wind Energy, LLC, Colorado Energy Consumers Group, Southwest Energy Efficiency Project, Colorado Coalition for New Energy Technologies, and CIEA.

5. No responses to the interventions were filed. We grant all petitions for intervention, except for Ms. Glustrom as discussed previously.

6. Staff of the Colorado Public Utilities Commission (Staff) and the OCC filed notices of intervention in Docket Nos. 04A-215E and 04A-216E.

7. Environment Colorado, CF&I Steel, LP and Climax Molybdenum Company, CIEA (the City and County of Denver and Colorado Consumers joined in the pleading), OCC, Staff, and Western Resource Advocates filed responses to Public Service's motions to consolidate Docket Nos. 04A-214E, 04A-215E, and 04A-216E. Except as noted below, respondents opposed consolidation. Public Service filed a motion to reply to the responses to the motions to consolidate, and a reply. We waive response time and grant the motion to reply.

8. Within the many responses, the arguments against consolidation generally raise four themes: 1) The application filed in Docket No. 04A-216E is not complete under the Commission's Rule 55, Rules of Practice and Procedure; 2) the waiver request of Public Service for LCP Rule 3610(b) has not been granted and it is premature to consolidate these dockets; 3) the issues in Docket Nos. 04A-215E and 04A-216E are not similar to the issues in Docket No. 04A-214E; and 4) consolidation would harm the overarching competitive acquisition concept of the LCP Rules, resulting in prejudice to the parties. Staff does not oppose consolidation and states that while the issues are similar, they have concerns with the impact of consolidation on the merits of Public Service's motion for rule waiver. Staff recommends that, if the Commission grants the consolidation request, the Commission should make it clear that such a decision has no effect on the merits of the motion for waiver of the 250 MW limit in Rule 3610(b).

9. CIEA does not oppose consolidation of Docket No. 04A-214E with Docket No. 04A-215E. It also moves to dismiss Docket No. 04A-216E, or requests that we hold a hearing on the motion for waiver of the 250 MW limit in Rule 3610(b) and decide on the issue before ruling on consolidation. Western Resource Advocates recommends that we consolidate Docket No. 04A-214E with Docket No. 04A-216E, but we should not include Docket No. 04A-215E in the consolidated case.

B. Findings

10. First, regarding the issue of completeness of the application filed in Docket No. 04A-216E: Some of the parties argue that the joint applicants (the REA Participants) in Docket No. 04A-216E did not provide financial information, as required by Rule 55(c)(5); and the application does not provide tariffs as required by Rule 55(c)(6). We disagree. Rule 55(c)(5) states that this rule applies to “areas not previously served.” We note that this is a *facilities* certificate of public convenience and necessity application, not an application for expansion of a service territory; thus, Rule 55(c)(5) is not applicable. Similarly, Rule 55(c)(6) requires “a proposed tariff showing the proposed rates, rules and regulations,” which is not applicable in this situation. Moreover, Public Service states that should the two REA Participants choose not to be involved in the Comanche 3 power plant, it will seek participation from other “load serving entities.” In conclusion, we find that these issues are related to the merits of the application, not completeness. Finally, we point out that the Commission ruled on completeness of this application at its June 16, 2004 Commissioners Weekly Meeting. At that meeting, the Commission decided that the application was complete.

11. Next, regarding the issues of the waiver not being granted and whether it is premature or improper to consolidate, we disagree with the arguments presented in the responses.

The Commission can hold a hearing on the merits of the motion for waiver of the 250 MW limit in LCP Rule 3610(b) at the same time it hears the merits of the overall LCP in Docket No. 04A-214E. We recognize that many parties expressed concern that consolidation might somehow prejudice the rule waiver issue, but we are not ruling on the merits of rule waiver at this time. Consolidation is for purpose of administrative efficiency and because the issues raised in the three dockets are interrelated; mere consolidation does not involve a ruling on the merits of the waiver request in any way. As is often the case in Commission proceedings, parties will provide alternative arguments and proposals for the Commission's consideration in ruling in these cases.

12. Third, regarding the argument that issues are not similar between the dockets, we disagree. As stated by Staff, the issues in Docket Nos. 04A-215E and 04A-216E are substantially similar to the issues in Docket No. 04A-214E. Parties also cite the difference between competitive resource acquisition and utility rate-based construction as grounds for a lack of similarity. As discussed below, the LCP Rules accommodate both methods.

13. Last, regarding the claim that consolidation would harm the overarching competitive acquisition concept of the LCP Rules, resulting in prejudice to the parties, again we disagree. The 250 MW alternative method of resource acquisition contained in LCP Rule 3610(b) itself deviates from the competitive acquisition concept in the LCP Rules. Embedded in the rule is the concept that competitive acquisition may not be needed for every resource. Through the requested rule waiver, the ultimate method used to acquire a specific resource will either be competitive acquisition or utility rate-based construction; however, the rules do not prohibit consolidation of the dockets. The impacts of the proposed waiver of the

250 MW limit in Rule 3610(b) warrant a full investigation through hearing, but does not preclude consolidation.

14. We find that the overlap of issues and parties in the three dockets warrant consolidation. The administrative efficiency gained by consolidating the dockets outweighs any confusion created by including all parties and all issues in the three dockets. Further, we clarify that by consolidating the dockets the Commission has not prejudged the merits of the motion for waiver of the 250 MW limit in LCP Rule 3610(b). Whether the Commission ultimately grants or denies the rule waiver, consolidated dockets will provide consistency between the interrelated decisions in an administratively efficient manner.

15. Consistent with the above discussion, we deny CIEA's request for the Commission to rule on Public Service's motion for waiver of the 250 MW limit in LCP Rule 3610(b) before considering the Company's other requests in these cases. We also deny CIEA's motion to dismiss Docket No. 04A-216E, and waive response time. We set the three dockets for hearing before the Commission by minute entry at the June 16, 2004 Commissioners Weekly Meeting, and we now consolidate these dockets. We further clarify that all issues in the three dockets, including the rule waiver issue (but excluding the Renewable RFP issue), are to be heard as part of one proceeding.

16. We find that a prehearing conference is necessary, and therefore set it at 1:30 p.m. on July 8, 2004. At the prehearing conference, the Commission will set the remaining procedural schedule for Docket Nos. 04A-214E (excluding the Renewable RFP issue), 04A-215E, and 04A-216E.

17. Finally, we grant the motion for *Pro Hac Vice* of Mary L. Will as counsel for PacifiCorp.

II. ORDER

A. The Commission Orders That:

1. We construe Ms. Glustrom's amendment as a motion to allow an amended petition for intervention out of time in Docket Nos. 04A-215E and 04A-216E, and waive response time. The amended petition to intervene by Ms. Glustrom is denied consistent with the above discussion.

2. The petitions to intervene in Docket No. 04A-215E by the following parties are granted: the Colorado Governor's Office of Energy Management and Conservation, Holy Cross Energy, Colorado Renewable Energy Society, City and County of Denver, Western Resource Advocates, City of Boulder, North American Power Group, Ltd, Colorado Mining Association, Environment Colorado, Calpine Corporation, LS Power Associates, LP, Climax Molybdenum Company and CF&I Steel, LP, Regents of University of Colorado-Boulder, Baca Green Energy, LLC and Prairie Wind Energy, LLC, Colorado Energy Consumers Group, Southwest Energy Efficiency Project, Colorado Coalition for New Energy Technologies, and Colorado Independent Energy Association.

3. The petitions to intervene in Docket No. 04A-216E by the following parties are granted: Colorado Governor's Office of Energy Management and Conservation, Holy Cross Energy, Colorado Renewable Energy Society, City and County of Denver, Western Resource Advocates, City of Boulder, North American Power Group, Ltd, Arkansas River Power Authority, Aquila, Inc., Colorado Mining Association, Environment Colorado, Calpine

Corporation, LS Power Associates, LP, Climax Molybdenum Company and CF&I Steel, LP, Regents of University of Colorado-Boulder, Baca Green Energy, LLC and Prairie Wind Energy, LLC, Colorado Energy Consumers Group, Southwest Energy Efficiency Project, Colorado Coalition for New Energy Technologies, and Colorado Independent Energy Association.

4. Response time to the Motion of Public Service Company of Colorado for leave to reply to responses to the Company's motion to consolidate dockets filed on June 22, 2004 is waived, and the motion is granted.

5. Docket Nos. 04A-214E, 04A-215E, and Docket No. 04A-216E are consolidated.

6. The Colorado Independent Energy Association's request for the Commission to rule on Public Service Company of Colorado's motion for waiver of the 250 MW limit in Rule 3610(b) before hearing the remainder of the case is denied.

7. The Colorado Independent Energy Association's motion to dismiss Docket No. 04A-216E is denied. Response time to the motion is waived.

8. The motion for admission *Pro Hac Vice* of Mary L. Will as counsel for PacifiCorp is granted.

9. A prehearing conference shall be held at the following time and location:

DATE: July 8, 2004

TIME: 1:30 p.m.

PLACE: Commission Hearing Room
Office Level 2 (OL2)
Logan Tower
1580 Logan Street
Denver, Colorado

10. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 22, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners