

Decision No. C04-0836

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 SETTING PROCEDURAL SCHEDULE
AND GRANTING MOTION
FOR EXTRAORDINARY PROTECTION**

Mailed Date: July 22, 2004
Adopted Date: July 8, 2004

I. BY THE COMMISSION

A. Statement

1. On July 8, 2004, the Commission held a prehearing conference in the above-mentioned dockets. The Commission orally ruled on two motions for extraordinary protection filed by Public Service Company of Colorado (Public Service or Company); and set procedures for hearing dates, filing deadlines, and associated requirements.

2. On June 18, 2004, Public Service filed motions for extraordinary protection in Docket Nos. 04A-214E and 04A -216E regarding cost and engineering information relating to Comanche 3 and for heat rate information of its existing power plants. Public Service claims that this information is competitively sensitive and requests that only Commission Staff and the Colorado Office of Consumer Counsel be given access to that information. No responses were filed to the motions. Since no party objects to the Company's requests, we grant both motions.

3. On April 30, 2004, Public Service filed a motion for waiver of the 250 MW limit in Rule 3610(b) (Motion for Waiver). The Colorado Independent Energy Association (CIEA); Staff of the Commission; the Colorado Office of Consumer Counsel; and CF&I Steel, LP and Climax Molybdenum Company filed responses. The Motion for Waiver is one of the main issues that the Commission must rule on in this consolidated case, and the parties will argue the merits of the motion through testimony and at hearing. Therefore, we are not ruling on the motion at this time.

4. In its Least-Cost Resource Plan (LCP) application filed on April 30, 2004, Public Service requested that the Commission approve the entire application by October 2004, or alternatively approve the All-Source Request for Proposal (RFP) by October 2004. We conclude that it would not be feasible to enter rulings on the applications by October. Consequently, we now consider whether to approve the All-Source RFP separately from other issues in the case. Public Service revised its originally-proposed schedule for the All-Source RFP to allow for an approximate one-month extension, resulting in a Commission decision by November 1, 2004 -- approximately three months before a Commission decision for the remainder of the case.

5. In its LCP application Public Service now argues that the resource need it has projected for 2006 and 2007 necessitates the early approval of the All-Source RFP.

However, in its September 25, 2003 Petition for Variance, in which Public Service requested a six-month extension of time to file its LCP, it stated that it would not need to issue an RFP before January 2005 for resources in 2008.¹ We granted that six-month extension of time based upon the Company's representations that this delay would not affect our ability to give full and timely consideration to the Least Cost Plan eventually proposed by Public Service.

6. In response to Commission questions at the prehearing conference, Public Service confirmed that its revised projection of earlier resource need in 2006 and 2007 is based largely on its proposal to increase reserve margins from 13 to 17 percent.² Public Service stated that it proposes to increase the reserve margin percentage as a result of a study that it initiated after it submitted the September 25, 2003 petition for variance. Public Service proposes to issue the All-Source RFP based on a 17 percent reserve margin and not bidding the Comanche 3 coal plant. The Commission would then rule on these issues after hearing, and any necessary adjustments would then be made to the RFP. Public Service also proposes to address wind capacity issues in the All-Source RFP.

7. We find that issues associated with the All-Source RFP are substantially intertwined with issues in the remainder of the consolidated case.³ In fact, the Commission granted Public Service's request to consolidate, and denied CIEA's request for a separate hearing on the Motion for Waiver, because of the overlap of issues in the three applications. Further, we do not believe that a three-month advancement in the release date of the All-Source RFPs warrants separation of the issues when Public Service itself previously argued that the need can

¹ See the September 25, 2003 Petition for Variance, Attachment D, Page 1 of 2

² As a part of the last Integrated Resource Planning Proceeding in Docket No. 99A-549E, the Commission approved a reserve margin range of 13 to 17 percent.

³ For example, whether a 17 percent reserve margin is appropriate is relevant to both the All-Source RFP and the remaining issues in the docket.

be met with a January 2005 RFP. We therefore deny Public Service's request for early approval of the All-Source RFP. We will consider the merits of the RFP as a part of the consolidated case. As a part of its justification for an extension of time to file its LCP, Public Service stated that it could meet its resource need by issuing an RFP in January 2005. Thus, we expect Public Service to take steps necessary to achieve this objective.⁴

8. The scope of this docket is governed by Rules 3600-3615 (LCP Rules). Rule 3610(f) directs a utility to select resources that minimize the net present value of rate impacts, and to grant a preference to renewable resources where cost and reliability considerations are equal. Furthermore, LCP Rule 3612 discusses the purpose and content of the RFPs. All testimony shall be limited to considerations that apply according to the LCP Rules. The Commission will entertain motions to strike testimony or exhibits that fall outside the scope of this docket.

9. CIEA requested that additional issues be included within the scope of this case. CIEA states that because the Commission has ruled that the Motion for Waiver will be heard at the same time as the remainder of the docket, Public Service must file testimony stating how it will address certain issues if the Commission denies the Motion for Waiver. These issues include: 1) the ground rules for bidding the proposed Comanche 3 coal plant; 2) compliance with utility bidding requirements contained in Rule 3610(e); and 3) how to fairly evaluate Public Service's rate-based plant against a competitively bid plant. In response, Public Service offered to file supplemental direct testimony on these issues. Public Service stated that it will also

⁴ Public Service indicated the possibility of electricity shortages in the summer of 2007 if the All-Source RFP decision is not issued by November 2004. Given that Public Service requested and received a six-month deferral of this docket, and that its commissioned study (upon which it relies to justify the 17 percent reserve margin) could have been commissioned earlier, we find this possibility not of our own making.

include testimony regarding a recent Federal Energy Regulatory Commission ruling on its interconnection policy. We find that these issues should be included in the scope of this proceeding.

10. The scope of the proceeding will therefore include approval of the Least Cost Plan,⁵ the All-Source RFP; bidding parameters; the motion for waiver of the 250 MW limit in Rule 3610(b); the proposed Comanche 3 rate-base plant and CPCN application; the proposed rate recovery plan; and the additional issues described in the preceding paragraphs.

11. CIEA requested that Public Service file testimony regarding the factual basis of its Motion for Waiver. Public Service responded that the LCP filing, with its list of section authors, constitutes its direct testimony. We find that supplemental testimony is not required here and any deficiencies in Public Service's case may be addressed through cross-examination, answer testimonies, and legal argument.

12. The Commission established the following procedural dates:

Supplemental Direct Testimony	August 13, 2004
Answer Testimony	September 13, 2004
Public Hearing in Pueblo, Colorado	September 23, 2004
Public Hearing in Denver, Colorado.....	September 27, 2004
Rebuttal and Cross Answer Testimony.....	October 18, 2004
Witness Lists and Estimated Cross-Examination Times	October 26, 2004
Hearings -- 3 weeks	November 1 through 19 ⁶
Statements of Position.....	December 3, 2004

⁵ Approval of the Renewable RFP, Volume 2 of 4, was removed from consideration in this case and set for hearing under Docket No. 04A-325E.

⁶ The Commission may hold hearings on Veterans Day, November 11, 2004, depending on how the proceeding is progressing. The Commission will make a decision on this during the proceeding.

13. Due to the expected number of people participating and attending these hearings, we direct Public Service to investigate alternative facilities in which to hold hearings, at its expense, and inform the Commission by August 31, 2004, about such facilities. These facilities must accommodate web casting of at least the audio portion of the hearing; appropriate Commissioner bench and court reporter seating area; tables for parties, attorneys, and witnesses; and sufficient audience space. We also direct Public Service to investigate possible facilities to hold public hearings in both Pueblo and Denver, at its expense, and inform the Commission by August 31, 2004, about such facilities.

14. Response time is limited to five calendar days, including objections, for any discovery filed after October 18, 2004. Otherwise, response times specified in the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, apply.

15. Public Service informed the Commission that it will purchase daily transcripts of the hearing.

16. In addition to the paper filing requirements under our rules of Practice and Procedure, we require all parties to file testimony and statements of position on disk, except for confidential information. We also require parties to provide service and discovery electronically to other parties if possible, in lieu of paper filings. All parties shall provide electronic filing information (*i.e.*, e-mail addresses) to other parties. All testimony shall be provided to other parties on the same day it is due to be filed at the Commission, either electronically if possible or in hard copy.

17. Public Service requested that the Commission direct the many parties in this case to consolidate testimony and cross-examination. We direct parties to consult with each other to

investigate consolidation of testimony and cross-examination where possible.⁷ We also direct parties to file a list of witnesses and estimated cross-examination times on or before October 26, 2004.

II. ORDER

A. The Commission Orders That:

1. The Motions for Extraordinary Protection filed on June 18, 2004, by Public Service Company of Colorado in Docket Nos. 04A-214E and 04A-216E, are granted.

2. The request by Public Service Company of Colorado for expedited consideration and approval of the All-Source RFP is denied.

3. Public Service Company of Colorado shall file supplemental direct testimony consistent with the above discussion.

4. The procedural schedule and directives discussed above, including due dates for the filing of testimony, witness lists, estimated cross-examination times, and statements of position, are adopted consistent with the above discussion.

5. Public hearings shall be held at the following times:

DATES: September 23, 2004, in Pueblo, and
September 27, 2004, in Denver

TIME: 4:00 p.m. to 7:00 p.m.

PLACE: Specific locations to be announced

⁷ The Commission has the discretion to disallow redundant evidence and cross-examination, even if proffered by different parties. Thus parties who do not attempt to coordinate their testimonies and cross-examinations with similarly-positioned parties risk disallowance of evidence and cross-examination.

6. Evidentiary hearings shall be held at the following times:

DATE: November 1, 2004,
and continued as necessary through November 19, 2004

TIME: 9:00 a.m.

PLACE: Denver, specific location to be announced.

7. On or before August 31, 2004, Public Service Company of Colorado shall report to the Commission on its investigation of facilities for public hearings and evidentiary hearings, consistent with the above discussion.

8. Response time shall be five calendar days, including objections, for any discovery filed after October 18, 2004. Otherwise, response times specified in the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, apply.

9. Parties shall consult with each other to consider coordination of testimony, discovery, and cross-examination where common positions permit such coordination.

10. Parties shall comply with the electronic filing and service requirements stated in the above discussion.

11. All testimony shall be provided to other parties on the same day as filing with the Commission, either electronically if possible or in hard copy.

12. Public Service Company of Colorado shall purchase daily transcripts.

13. This Order is effective on its Mailed Date.

**B. ADOPTED IN PREHEARING CONFERENCE
July 8, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners