

Decision No. C23-0130

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0563E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONVERSION OF PAWNEE GENERATING STATION FROM COAL OPERATIONS TO NATURAL GAS OPERATIONS.

**COMMISSION INTERIM DECISION
SETTING MATTER FOR HEARING,
ESTABLISHING PARTIES, GRANTING MOTION TO FILE
SUPPLEMENTAL DIRECT TESTIMONY, AND
ACKNOWLEDGING WAIVER OF STATUTORY
DEADLINE FOR A FINAL COMMISSION DECISION**

Mailed Date: February 23, 2023

Adopted Date: February 8, 2023

I. BY THE COMMISSION

A. Statement

1. On December 20, 2022, Public Service Company of Colorado (Public Service or the Company) filed an Application for a Certificate of Public Convenience and Necessity (CPCN) for the Conversion of the Pawnee Generation Station from Coal Operations to Natural Gas Operations (Application). Public Service also filed a Motion for Leave to File Supplemental Direct Testimony (Supplemental Direct Motion) seeking leave to file additional testimony in support of the approval of the Application.

2. By this Decision, the Commission sets the Application for hearing, and grants the Supplemental Direct Motion. Also by this Decision, we grant the requests for permissive intervention filed by Climax Molybdenum Company (Climax) and jointly by Natural Resources

Defense Council and Sierra Club (Conservation Coalition). We further acknowledge the notices of intervention of right filed by Staff of the Colorado Public Utilities Commission (Staff) and the Colorado Office of the Utility Consumer Advocate (UCA).

3. Consistent with the discussion below, the Commission will determine whether to refer this matter to an Administrative Law Judge or to hear the case *en banc* following Public Service's submission of its Supplemental Direct Testimony.

B. Application and Supplemental Direct Motion

4. Public Service explains in the Application that the conversion of the Pawnee Generating Station is a component of the Company's Coal Action Plan that was part of the comprehensive settlement agreement approved in Proceeding No. 21A-0141E. The conversion of Pawnee to operate on natural gas instead of coal by the end of 2025 will enable emissions reductions consistent with the Company's target to reduce its carbon emissions by over 80 percent by 2030. Public Service also states that converting Pawnee will maintain a 505 MW dispatchable resource.

5. Public Service will principally conduct the conversion of Pawnee in or around the fall of 2025. Public Service states that it requests flexibility to advance the conversion timeline if it believes it can reasonably do so while maintaining system reliability, resource adequacy, and the cost reviewed by the Commission through this proceeding.

6. Public Service currently forecasts a cost of approximately \$85 million to conduct the conversion, with the caveat that these costs will be further informed by the ongoing studies that will be part of the Supplemental Direct Testimony the Company seeks to file with the Commission in May of 2023. The \$85 million figure is significantly higher than the \$44 million

estimate used by the Company in the development and presentation of its Clean Energy Plan in Proceeding No. 21A-0141E.

7. In Direct Testimony filed with the Application, Public Service argues that since the time the settlement was reached in Proceeding No. 21A-0141E, the Company updated the cost estimates to align more accurately “with today’s pricing” based on “clearer understanding of the scope of the work required to perform the conversion.”¹

8. Public Service states that it does not seek an advance presumption of prudence for the conversion costs, but it does request that the Commission confirm that Public Service will recover all costs that it reasonably and prudently incurs for the conversion, consistent with the CPCN approval.² In its Application, Public Service requests that the Commission (1) issue a CPCN for the conversion of the Pawnee generating station from coal to gas operations; (2) generally approve the Company’s proposed plan, project timeline, construction schedule and costs for the conversion, to be supplemented by Supplemental Direct Testimony; (2) confirm that Public Service will recover all costs that it reasonably and prudently incurs for the conversion, consistent with the CPCN approval; (4) approve the flexibility for the Company to advance the conversion timeline, if appropriate; and (5) approve the project-reporting timing and content as proposed by the Company.

9. In the Application, Public Service proposes a procedural schedule that will allow the Company’s consultants to complete ongoing studies by the end of the first quarter of 2023, review the results, and craft Supplemental Testimony to be filed no later than May 15, 2023. Because the proposed procedural schedule will extend beyond the 210-day statutory deadline

¹ Hearing Exhibit 102, Kelly Direct Testimony, p. 27.

² Application, p. 4.

under § 40-6-109.5, C.R.S., Public Service agrees to waive the statutory deadline for a Commission decision on the Application. The Company nevertheless requests a final decision on or about February 5, 2024 in accordance with the planned conversion date for emission reduction purposes.

10. Public Service states in its Supplemental Direct Motion that it intends to offer more refined plans for the conversion work, an updated cost estimate, and a revised project timeline and construction schedule. Some of the Company's related procedural requests are set forth in a Supplemental Direct Motion, including that the remainder of the procedural schedule should be determined following the Company's submittal of Supplemental Direct Testimony. The Company states that Supplemental Direct Testimony is necessary because the Company is currently in the process of receiving results from three critical studies and the May 15, 2023 deadline will enable the Company to receive the studies, digest the results, and prepare Supplemental Direct Testimony.

C. Interventions and Parties in this Proceeding

11. The Commission issued a Notice of Application Filed on December 22, 2022. The Notice set a 30-day intervention period through January 23, 2023, with an additional seven days for Staff to file its intervention pleading.

12. On January 20, 2023, the Conservation Coalition filed its motion to intervene. NRDC is a national non-profit focusing on protection of the environment that represents over 14,000 litigation and advocacy members in Colorado, many of which are Public Service customers. Sierra Club is a national non-profit environmental organization dedicated to the protection of public health and the environment. Sierra Club petitions to intervene in this Proceeding on behalf of itself and the 17,698 Sierra Club members who live in Colorado, including 11,780 members who are electric or gas customers of Public Service. Both Sierra Club and NRDC state they and their members have

a pecuniary and tangible interest in the costs at issue in this Proceeding, as well as the air quality benefits and benefits from decreased pollution that will occur once Pawnee converts from coal to gas. The Conservation Coalition claim their interests are distinct from other parties that regularly participate in Commission proceedings and no other party, including UCA, will adequately represent the Conservation Coalition's interests in this Proceeding. The Conservation Coalition list several issues they plan to investigate and address throughout the proceeding.

13. On January 20, 2023, UCA filed a notice of intervention of right and a request for hearing. The UCA represents the public interest and specific interests of residential, small business, and agricultural customers under § 40-6.5-104, C.R.S. UCA details several issues it plans to address, including whether the Application is in the public interest, whether the Company's cost forecasts are reasonable, and whether the Commission should require cost caps or other mechanisms to incentivize the Company to control costs of the project. On January 23, 2023, Climax filed its motion to intervene. Climax operates mines near Leadville and Empire, Colorado and receives electric service from Public Service under the Transmission General rate schedule. Climax intends to address, among other topics, the costs for the project, and the impacts on the timing and manner of cost recovery. Climax claims the decision in this Proceeding will directly and substantially affect Climax's energy costs and possibly the reliability of Climax's electric service necessary for mining and milling molybdenum and will have a significant pecuniary and tangible impact on Climax. Climax states its interests are unique as one of Public Service's largest electric customers, and therefore its interests would not be adequately represented unless Climax is allowed to intervene.

14. On January 30, 2023, Staff filed a notice of intervention of right and request for hearing. Staff details several issues it plans to address, including the overall accuracy of the

Company's cost calculations, whether a performance incentive mechanism is appropriate considering the changes in costs, the reasons the Company has yet to complete critical studies, and the anticipated project timeline and construction schedule.

15. Pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1401(b) of the Commission's Rules of Practice and Procedure, no decision is required in response to appropriately filed notices of intervention by right. We acknowledge the notices of intervention of right, and that Staff and UCA are parties to this Proceeding.

16. Rule 4 CCR 723-1-1401(c) of the Commission's Rules of Practice and Procedure sets forth the standard for permissive intervention and states, in relevant part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.

17. Further, Rule 4 CCR 723-1-1401(c) requires that a movant who is a "residential consumer, agricultural consumer, or small business consumer" must discuss in the motion whether the distinct interest of the consumer is either not adequately represented by the UCA or inconsistent with other classes of consumers represented by the UCA. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., the UCA has a statutory mandate to represent the interest of the Company's residential small business, and agricultural customers in Colorado.

18. We find that each entity seeking permissive intervention has sufficiently demonstrated that this Proceeding may substantially affect its pecuniary or tangible interests, as is required by Rule 1401(c). Each also has demonstrated that its interests would not otherwise be

adequately represented. Therefore, we grant the requests for permissive intervention. Conservation Coalition and Climax are parties to this Proceeding.

D. Findings and Conclusions

19. On February 7, 2023, by operation of Rule 4 CCR 723-1-1303(c)(III) of the Commission's Rules of Practice and Procedure, the Application was deemed complete for purposes of § 40-6-109.5, C.R.S.

20. The Commission finds good cause to set the Application for hearing. We share the concerns of the intervening parties regarding the increase in the estimated cost of the conversion project and are interested in the additional information regarding the project the Company proposes to submit later in the form of Supplemental Direct Testimony. Accordingly, we also find good cause to grant the Supplemental Direct Motion. Public Service shall file the Supplemental Direct Testimony no later than May 15, 2023.

21. Because the Supplemental Direct Testimony will be central to the Commission's review of the Application, we will decide whether this matter will be heard *en banc* or by an Administrative Law Judge by a separate future decision to be rendered upon review of the Supplemental Direct Testimony.

22. In addition to Public Service, the parties in this Proceeding include: Staff; UCA; Climax; and the Conservation Coalition.

23. We acknowledge that Public Service waives the statutory deadline for a decision of the Commission on the Application pursuant to § 40-6-109.5, C.R.S.

II. ORDER**A. It Is Ordered That:**

1. The Application for a Certificate of Public Convenience and Necessity for the Conversion of the Pawnee Generation Station from Coal Operations to Natural Gas Operations filed by Public Service Company of Colorado (Public Service) on December 20, 2022, is set for hearing. Consistent with the discussion above, whether this matter will be heard *en banc* or by an Administrative Law Judge will be determined by a separate future decision.

2. The Motion for Leave to File Supplemental Direct Testimony filed by Public Service on December 20, 2022 is granted, consistent with the discussion above. Public Service shall file the Supplemental Direct Testimony no later than May 15, 2023.

3. The Motion to Intervene Permissively filed by Climax Molybdenum Company on January 23, 2023, is granted.

4. The motion to intervene filed jointly by Natural Resources Defense Council and Sierra Club on January 20, 2023, is granted.

5. The parties to this Proceeding are: Public Service, Staff of the Colorado Public Utilities Commission, the Colorado Office of the Utility Consumer Advocate, Climax Molybdenum Company, and Natural Resources Defense Council and Sierra Club, jointly.

6. Public Service waives the statutory deadline for a decision of the Commission on the Application pursuant to § 40-6-109.5, C.R.S.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 8, 2023.**

(S E A L)



ATTEST: A TRUE COPY



G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners