

Decision No. C24-0829-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 24A-0417E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS COST TO CONSTRUCT PERFORMANCE INCENTIVE MECHANISM ("PIM") AND OPERATIONAL PIM RELATED TO COMPANY-OWNED GENERATION RESOURCES APPROVED IN PROCEEDING NO. 21A-0141E.

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**INTERIM COMMISSION DECISION DEEMING  
APPLICATION COMPLETE, SETTING APPLICATION FOR  
AN EN BANC HEARING, ESTABLISHING PARTIES, AND  
REQUIRING CONFERRAL ON A PROCEDURAL SCHEDULE**

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Issued Date: November 15, 2024  
Adopted Date: November 13, 2024

**I. BY THE COMMISSION**

**A. Statement**

1. On September 30, 2024, Public Service Company of Colorado ("Public Service" or the "Company") filed a Verified Application for Approval of its Cost to Construct ("CtC") Performance Incentive Mechanism ("PIM") and Operational PIM related to Company-Owned Generation Resources approved in Proceeding No. 21A-0141E ("Application").

2. By this Decision, the Commission grants the requests for permissive intervention filed by Colorado Energy Consumers ("CEC") and Climax Molybdenum Company ("Climax") and acknowledges the notices of intervention of right filed by Staff of the Colorado Public Utilities Commission ("Staff") and the Office of the Utility Consumer Advocate ("UCA").

3. In addition, this Decision deems the Application complete for purposes of § 40-6-109.5, C.R.S., and sets the Application for hearing before the Commission *en banc*. We direct Public Service to confer with the parties in this Proceeding on a procedural schedule and file either a conferral report describing the efforts to reach consensus on a proposed procedural schedule or a motion to approve a proposed procedural schedule on or before November 22, 2024.

**B. Background**

4. In its Application and direct testimony, the Company recounts that through Decision No. C24-0052 in Proceeding No. 21A-0141E (the “Phase II Decision”) the Commission required that all Company-owned generating assets arising from Proceeding No. 21A-0141E (the 2021 Electric Resource Plan (“ERP”) and Clean Energy Plan (“CEP”)) be subject to a CtC PIM and an Operational PIM. However, the Phase II Decision does not fully establish the nuances of these PIMs.

5. In Proceeding No. 24A-0140E, Public Service sought and obtained certificates of public convenience and necessity (“CPCNs”) for two of the Company-owned assets arising from the 2021 ERP/CEP: Rocky Mountain (a 325 MW solar plus 200 MW storage facility) and Arroyo 2 (a 335 MW solar facility). Staff and UCA intervened in Proceeding No. 24A-0140E, and these intervenors and Public Service ultimately reached a comprehensive Settlement Agreement. As part of the Settlement Agreement, the Company committed to file, no later than September 30, 2024, a CtC and Operational PIM for all of the Company-owned projects arising from the 2021 ERP/CEP. This September 30, 2024 filing was supposed to clarify details of the CtC and Operational PIMs,

including the treatment of curtailments and the proper amortization period, if any, for the CtC PIM.<sup>1</sup> The Commission approved the Settlement Agreement without modification.<sup>2</sup>

6. After approval of the Settlement Agreement, the Commission issued a second Decision in Proceeding No. 24A-0140E setting forth additional guidance for the September 30, 2024 PIM filing. In the Decision, the Commission encouraged stakeholders to address whether the investment tax credit (“ITC”) can be incorporated into the actual plant costs over the life of the project instead of the Settlement Agreement’s approach, in which the ITC payments are essentially treated as a rebate that is returned to customers over the first five years of a project’s operations.<sup>3</sup> In addition, the Commission requested that stakeholders consider what additional reporting could help clarify how ITCs are monetized and continued to express interest in a mechanism that incentivizes the timely construction of the various generation resources.<sup>4</sup> Finally the Commission suggested that the parties consider whether it would be appropriate for the Operational PIM to remain more focused on the production values of the various generation projects as opposed to expanding the PIM to cover the levelized cost of energy in a broader sense.<sup>5</sup>

## **C. Discussion, Findings, and Conclusions**

### **1. Application**

7. The bulk of Public Service’s Application and supporting testimony address the various unresolved details for the CtC PIM and the Operational PIM. For example, Public Service states that the Commission’s prior decisions do not define how any incentive or disincentive would

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<sup>1</sup> Decision No. C24-0525 at ¶¶ 29-30 issued in Proceeding No. 24A-0140E (July 23, 2024).

<sup>2</sup> Decision No. C24-0525 at ¶ 40.

<sup>3</sup> Decision No. C24-0588 at ¶ 6 issued in Proceeding No. 24A-0140E (August 20, 2024).

<sup>4</sup> Decision No. C24-0588 at ¶¶ 7-8. Regarding the timing incentive, the Commission emphasized that it agreed with the Settlement Agreement’s provisions that no separate timing PIM is necessary for the Rocky Mountain and Arroyo 2 projects.

<sup>5</sup> Decision No. C24-0588 at ¶ 9.

be recovered and amortized following the commercial operation of a project, including the associated carrying charge and amortization period. Through its direct testimony, the Company argues that any incentive or disincentive should be amortized over the life of the project with no carrying cost.<sup>6</sup> Public Service also addresses the interaction between ITC benefits and the total plant costs recovered in rates and proposes flowing ITC benefits back to customers over the entire depreciable life of the underlying asset.<sup>7</sup>

8. Yet another issue Public Service raises is whether projects subject to only the CtC PIM (*i.e.*, capacity projects like standalone storage and thermal units) should be afforded accelerated cost recovery or whether Public Service would need to wait until the first electric rate case following the project's in-service date.<sup>8</sup> Public Service also raises the issue of a separate timing incentive but argues against an additional PIM. The Company asserts that incentives and disincentives regarding project delays are already incorporated into the CtC PIM via the impact of the Allowance for Funds Used During Construction ("AFUDC").<sup>9</sup>

9. As for the Operational PIM, one of the unresolved issues Public Service raises is how the Company will back out capital costs, insurance, and property tax costs from the levelized cost of energy. The Company further states that the precise treatment of curtailments and issues such as how Production Tax Credits are treated for purposes of the baseline also needs to be addressed.<sup>10</sup> Noting that the Operational PIM is not intended to shift curtailment risk to the Company, Public Service proposes to include in the calculation of the Operational PIM incentive/disincentive both generated volumes and curtailed volumes.<sup>11</sup>

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<sup>6</sup> Hr. Ex. 101, Pascucci Direct, p. 21.

<sup>7</sup> Hr. Ex. 101, Pascucci Direct, pp. 17-19.

<sup>8</sup> Hr. Ex. 101, Pascucci Direct, p. 25.

<sup>9</sup> Hr. Ex. 101, Pascucci Direct, pp. 43-45.

<sup>10</sup> Application at p. 3.

<sup>11</sup> Hr. Ex. 102, Watson Direct, pp. 14-15.

10. In the Application, Public Service also asks that it be allowed to defer expenses associated with preparing and litigating this Proceeding (*e.g.*, transcripts, hearing costs, and outside legal counsel). Public Service notes in the 2021 ERP/CEP Phase I Decision, the Commission approved the Company's request to track and defer adjudication expenses in a non-interest-bearing regulatory asset. Given the intertwined relationship between the current Proceeding and the 2021 ERP/CEP, the Company argues that the same deferred accounting treatment is appropriate here.<sup>12</sup>

11. The Commission will hear this Proceeding *en banc*. This Proceeding will decide important details about how the CtC and Operational PIM previously established in the 2021 ERP/CEP will apply. Moreover, the decisions reached in this Proceeding will likely impact the PIM calculations for every Company-owned resource arising from the 2021 ERP/CEP. These important policy determinations warrant an *en banc* hearing.

12. In addition, the Commission finds the Application addresses all applicable Commission Rules and is therefore deemed complete for purposes of § 40-6-109.5, C.R.S.

## **2. Parties to the Proceeding**

13. UCA and Staff filed timely notices of intervention by right on October 29, 2024, and November 7, 2024, respectively. In their filings, they outline several issues they plan to address in this Proceeding and request a hearing.

14. Pursuant to Rule 1401(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1, 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 the UCA are parties to this Proceeding.

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<sup>12</sup> Hr. Ex. 101, Pascucci Direct, pp. 46-47.

15. CEC<sup>13</sup> and Climax filed timely motions for permissive interventions on November 1, 2024, and November 4, 2024, respectively.

16. Climax operates the Climax and Henderson molybdenum mines and related facilities near Leadville and Empire, Colorado, respectively, and it is one of Public Service's largest electric customers. Climax states the Commission's decision and resolution of both the CtC and Operational PIMs in this proceeding will directly and substantially affect the cost and reliability of Climax's electricity service. Climax states its interest in the Application includes, among other things, whether the proposed PIMs comply with the Commission's directives on how they should be defined, whether the PIMs result in a just and reasonable sharing of costs and risks between the Company and its customers, whether the CtC baselines should be adjusted for any future adjustments in the costs of the approved Company-owned resources, and whether the interaction between capital costs and tax credits in the two PIMs is appropriate. Climax contends that, as one of Public Service's largest electric customers, its interests are unique and therefore will not be adequately represented by another party.

17. CEC asserts it has a direct, tangible, and pecuniary interest in this Proceeding because the CtC and Operational PIMs will have a direct and substantial impact on CEC members' electric rates and service. Additionally, CEC points out it was an intervenor and active participant in the 2021 ERP/CEP proceeding and Proceeding No. 24A-0140E regarding the Rocky Mountain/Arroyo 2 CPCNs and that these earlier proceedings gave rise to this Proceeding. CEC states its participation in this case will like focus on whether the proposed PIMs are necessary, consistent with the requirements of the 2021 ERP/CEP and Rocky Mountain/Arroyo 2 CPCN

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<sup>13</sup> For purposes of this Proceeding, CEC's membership includes: AirGas, USA, LLC, Google, Lockheed Martin Corporation, Occidental Energy Ventures, Suncor Energy (U.S.A.) Inc., and Western Midstream.

decisions, and reasonably share cost and performance risk between customers and Public Service shareholders. CEC states no other party or intervenor could adequately represent CEC's interests due to the unique service requirements and characteristics of each CEC member, and of CEC as a group.

18. Rule 1401(c), 4 CCR 723-1, 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.

Under this standard, the test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative.

19. In addition, Rule 1401(c) requires that a movant who is a residential consumer, agricultural consumer, or small business consumer discuss 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, C.R.S., the UCA has a statutory mandate to represent the public interest and, to the extent consistent therewith, the specific interests of residential consumers, agricultural consumers, and small business consumers by appearing in proceedings before the Commission.

20. We find that, as required by Rule 1401(c), both entities discussed above that seek to permissively intervene have sufficiently demonstrated that this Proceeding may

substantially affect their pecuniary or tangible interests and that its interests would not otherwise be adequately represented. Therefore, we grant the requests for permissive intervention.

21. The following are parties to this Proceeding: Public Service, Staff, UCA, Climax, and CEC.

### **3. Conferral**

22. We direct Public Service to confer with the parties to develop a proposed procedural schedule. The proposed procedural schedule should set the deadline for filing any settlement agreement to ensure that the Commission receives the terms of the settlement agreement and any supporting testimony sufficiently in advance of the start of the evidentiary hearing. Public Service shall file either a conferral report describing the efforts to reach consensus on a proposed procedural schedule or a motion to approve a proposed procedural schedule no later than November 22, 2024.

## **II. ORDER**

### **A. It Is Ordered That:**

1. The Verified Application for Approval of its Cost to Construct (“CtC”) Performance Incentive Mechanism (“PIM”) and Operational PIM related to Company-Owned Generation Resources approved in Proceeding No. 21A-0141E filed by Public Service Company of Colorado (“Public Service”) on September 30, 2024, is deemed complete for purposes of § 40-6-109.5, C.R.S.

2. The Intervention as a Matter of right filed by the Office of the Utility Consumer Advocate (“UCA”) on October 29, 2024, is acknowledged.

3. The Notice of Intervention as of Right filed by Trial Staff of the Public Utilities Commission (“Staff”) on November 7, 2024, is acknowledged.



4. The Motion to Intervene Permissively Intervene filed on November 1, 2024, by Climax Molybdenum Company (“Climax”) is granted.

5. The Motion to Permissibly Intervene filed on November 4, 2024, by Colorado Energy Consumers (“CEC”) is granted.

6. The parties to this Proceeding are: Public Service, Staff, UCA, Climax, and CEC.

7. Public Service is directed to confer with the established parties to this Proceeding in order to develop a proposed procedural schedule, consistent with the discussion above. Public Service shall file a report addressing its conferral with the parties regarding a procedural schedule or a motion to approve a consensus procedural schedule no later than November 22, 2024.

8. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING  
November 13, 2024.**



(S E A L)

ATTEST: A TRUE COPY

*Rebecca E. White*

Rebecca E. White,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners