

Decision No. C24-0337

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

PROCEEDING NO. 21A-0141E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2021 ELECTRIC RESOURCE PLAN AND CLEAN ENERGY PLAN.

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**COMMISSION DECISION REQUIRING A  
SUPPLEMENTAL FILING REGARDING THE  
STAKEHOLDER PIM PROPOSAL AND SETTING  
ADDITIONAL FILING REQUIREMENTS**

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Mailed Date: May 17, 2024

Adopted Date: May 15, 2024

**I. BY THE COMMISSION**

**A. Statement**

1. Through this Decision, the Commission requires Public Service Company of Colorado (Public Service or Company) to make a supplemental filing by May 29, 2024. As set forth below, this supplemental filing, which will take the form of written testimony, shall set forth greater detail regarding the actual and forecasted capital expenditures associated with Pueblo Unit 3.

2. In addition, through this Decision we clarify and require that any intervenor responses to Public Service's stakeholder performance incentive mechanism (PIM) be in the form of written testimony as opposed to comments. Intervenors shall have up to and including June 7, 2024, within which to file such responsive testimony.

**B. Background and Stakeholder PIM**

3. We have previously detailed the background and procedural history of this case in Decision No. C24-0052, issued January 23, 2024, (Phase II Decision), and Decision No. C24-0161, issued March 13, 2024 (First RRR Decision). Here, we provide only that background and procedural history necessary for this Decision.

4. The concept of a stakeholder PIM is present in the Updated Non-Unanimous Partial Settlement Agreement (Phase I Settlement Agreement) that was filed on April 26, 2022. The Updated Settlement Agreement specifies that Company will file one or more PIM proposals with the Commission 60 days after the filing of the 120-Day Report with supporting testimony, and a 30-day comment period follows the filing of the PIM proposals. If the PIM proposals are contested, the Updated Settlement Agreement contemplates that the Commission will conduct a limited and expedited hearing within 30 days of comment deadline and issue a decision on any PIM within 30 days of the hearing. The Updated Settlement Agreement notes that “it is anticipated that this decision will follow any Phase II decision.”<sup>1</sup> As for the substance, the Phase I Settlement Agreement specifically contemplates the development of an emissions reduction PIM.<sup>2</sup>

5. In Decision No. C22-0459,<sup>3</sup> (Phase I Decision), the Commission approved the Phase I Settlement Agreement’s proposed PIM stakeholder process but clarified that the Commission is not bound by the timeframes set forth in the Updated Settlement Agreement regarding when a hearing should be held or when the Commission should issue a decision ruling on the proposed PIMs.<sup>4</sup> The Commission went on to specify certain requirements for the emissions reduction PIM, including the appropriate baseline. In addition, the Phase I Decision directs that

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<sup>1</sup> Updated Settlement Agreement, ¶ 51.

<sup>2</sup> Phase I Settlement, ¶ 50

<sup>3</sup> Issued August 3, 2022.

<sup>4</sup> Phase I Decision, ¶ 389.

the stakeholder process also be used to craft PIMs addressing Unit 3's O&M expenses, capital costs, and availability factor,<sup>5</sup> and that the Company include in its PIM proposal "a narrative describing Unit 3's planned overhauls."<sup>6</sup>

6. In Decision No. C23-0795-I,<sup>7</sup> the Commission granted an unopposed motion for a variance regarding when Public Service is required to file the stakeholder PIM proposal. Under the initially approved stakeholder process timeline, the PIM proposal was due on November 17, 2023. The Company requested, and the Commission granted, a variance from this deadline.<sup>8</sup>

7. Public Service ultimately filed its proposal for the stakeholder PIM in the testimony of Michael Pascucci (Stakeholder PIM) on April 30, 2024. Public Service states that the Company first convened with Trial Staff of the Commission (Staff), Western Resource Advocates (WRA), and the Colorado Energy Office (CEO) (Initial PIM Discussion Parties) to begin discussions of both an emissions reduction PIM and the Unit 3 PIM. These Initial PIM Discussion Parties met repeatedly throughout January, February, and March.<sup>9</sup> Regarding the rest of the intervenors, Public Service notes that the Company convened two virtual discussions, to which all parties to the Proceeding were invited.<sup>10</sup>

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<sup>5</sup> Phase I Decision, ¶¶ 391-92.

<sup>6</sup> Phase I Decision, ¶ 86.

<sup>7</sup> Issued November 30, 2023.

<sup>8</sup> Decision No. C23-0795-I, ¶ 11.

<sup>9</sup> PIM Testimony of Michael Pascucci, p. 10.

<sup>10</sup> PIM Testimony of Michael Pascucci, p. 10.

8. Starting with the Unit 3 PIM, Public Service explains that the proposed PIM takes the O&M and capital costs (as assumed in the Phase II modeling)<sup>11</sup> and then uses the 502.8 MW capacity of Unit 3 together with the availability factor (again, from the Phase II modeling) to create a \$/MW value. This is the baseline value to which the Company will compare its actual performance in order to determine if an incentive or disincentive is achieved in a given year.<sup>12</sup> If costs exceed a ten percent deadband, then the Company would share 20 percent of the overages and vice versa.<sup>13</sup> Disincentives and incentives are calculated on an annual basis as part of the annual Electric Commodity Adjustment and Purchased Capacity Cost Adjustment prudence reviews, and there is an annual \$1 million cap on any incentive or disincentive.<sup>14</sup> Public Service proposes to begin the Unit 3 PIM on January 1, 2025, and conclude it at the earlier of December 31, 2030, or the actual retirement date of Unit 3.<sup>15</sup>

9. Public Service represents that Staff and WRA both support the proposed Unit 3 PIM and that CEO does not oppose it.<sup>16</sup>

10. As for the emissions reduction PIM, Public Service states that it has engaged with the Initial PIM Discussion Parties to begin developing an emissions PIM but that “the Company and stakeholders are not yet ready to bring forward an emissions PIM for approval.”<sup>17</sup> The Company asserts that the Initial PIM Discussion Parties have not yet landed upon a metric

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<sup>11</sup> Public Service notes that the Initial PIM Discussion Parties agree to exclude the variable O&M (VOM) costs from the baseline costs. The Company reasons that VOM costs such as chemicals and greenhouse gas emissions fees, are outside the Company’s control and are simply a factor of plant dispatch. Similarly non-energy supply (ES) O&M are also excluded from the baseline costs. The Company reasons that excluding Non-ES O&M (*i.e.*, certain benefits and related costs that are not included in internal Energy Supply O&M management reporting) is consistent with how unit costs were evaluated as part of the Unit 3 investigatory proceeding. (PIM Testimony of Michael Pascucci, pp. 13-14).

<sup>12</sup> See PIM Testimony of Michael Pascucci, p. 13.

<sup>13</sup> PIM Testimony of Michael Pascucci, p. 19.

<sup>14</sup> PIM Testimony of Michael Pascucci, pp. 20-21.

<sup>15</sup> PIM Testimony of Michael Pascucci, p. 21.

<sup>16</sup> PIM Testimony of Michael Pascucci, p. 10.

<sup>17</sup> PIM Testimony of Michael Pascucci, p. 29.

that appropriately balances the objectives of the PIM and the Commission's expectations. The Company expects to continue engaging stakeholders to try to develop a consensus approach to an emissions PIM but does not propose a specific filing date. Rather, the Company states that it anticipates filing updates with the Commission.<sup>18</sup>

11. Public Service lists several challenges in designing the emissions reduction PIM. For instance, the Company states that it is difficult to determine whether the costs necessary to drive additional emissions reductions are reasonable given that operational changes alone are unlikely to drive significant emissions reductions.<sup>19</sup> In addition, Public Service argues that economic growth and electrification of other sectors drives electric load growth and potentially electric system emissions. Thus, the Company suggests that the emissions reduction PIM might need to adjust for these factors. Moreover, Public Service notes that uncertainties in modeling, implementation, and the results of the 2024 Pueblo Just Transition Solicitation make designing the emissions reduction PIM challenging.<sup>20</sup>

12. The Company goes on to list other events that impact the development of the emissions reduction PIM, such as the agreement in the Company's Phase I electric rate case in 2023 (Proceeding No. 22AL-0530E) to explore performance-based regulatory frameworks. Public Service also notes that the ongoing development of the operational PIM in the 2021 ERP/CEP (*e.g.*, how curtailments are incorporated) might interact with the emissions reduction PIM.<sup>21</sup> More broadly, the Company estimates that "there are now 16 PIMs in operation with the potential to add another 3 to 5 through the ERP & CEP and the pending Demand-Side Management and Beneficial Electrification Plan alone," and these numbers do not include the PIMs associated

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<sup>18</sup> PIM Testimony of Michael Pascucci, p. 29.

<sup>19</sup> PIM Testimony of Michael Pascucci, p. 30.

<sup>20</sup> PIM Testimony of Michael Pascucci, pp. 30-31.

<sup>21</sup> PIM Testimony of Michael Pascucci, pp. 32-33.

with the gas business or Clean Heat Plan. Public Service argues that the sheer number of PIMs creates risks to operations and that “we are reaching a tipping point where an evaluation of the impact, benefits, and intentions of PIMs will need more holistic consideration to ensure State energy policy goals as a whole are aligned with the tactical direction being given to the Company.”<sup>22</sup>

### **C. Findings and Conclusions**

13. At the outset, the Commission notes that it is difficult, if not impossible, to track and compare the projected and actual capital expenditures for precise projects associated with Unit 3 across the documents the Company provided during Phase I, the information associated with the 120-Day Report, and in the 2023 and 2024 Annual Progress Reports. Moreover, Public Service does not include in its Stakeholder PIM proposal “a narrative describing Unit 3’s planned overhauls,” as the Phase I Decision requires.<sup>23</sup>

14. While more transparency regarding both the forecasted and actual expenditures is important for several reasons, the information is particularly critical in our analysis of the proposed Unit 3 PIM, with its annual caps on incentives and disincentives and the proposed start date of January 1, 2025. Accordingly, we direct Public Service to make a supplemental filing that includes, in one document, the actual and projected capital expenses by project for 2023 through 2030 for Unit 3.<sup>24</sup> This document shall include references to the base documents from which the capital expenses originate. To be clear, Public Service must show in this document the Company’s forecasts for capital expenditures for 2023-2030 and then, to the extent available for years 2023 and 2024, the actual capital expenditures. The Company shall present a comparison of values by

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<sup>22</sup> PIM Testimony of Michael Pascucci, p. 34.

<sup>23</sup> Phase I Decision, ¶ 86.

<sup>24</sup> We recognize that the 2024 Annual Progress Report only contains projections through 2028. We only require Public Service to provide Unit 3 forecasts to the extent available.

project and explain any discrepancies between projected expenditures and actual expenditures. This data must clearly distinguish which costs are common to Commanche Station versus those costs specific to Unit 3 and whether the expenditures represent the total costs or only the portion of the costs for which Public Service is responsible. The Company must also identify the reasoning for any major changes in forecasted expenditures by project between values presented in each of the following: Phase 1, the documents associated with the Phase II modeling (and by extension, the baseline figures that the Company proposes to use for the Unit 3 PIM), and the 2023 and 2024 Annual Progress Reports.

15. Public Service shall make this supplemental filing by May 29, 2024. This supplemental filing shall be in the form of written testimony and attachments, as necessary, consistent with the Company's Stakeholder PIM proposal filed on April 30, 2024.

16. Given the May 29, 2024, deadline for the Company's supplemental filing, we extend the deadline for intervenors to provide feedback on the Company's Stakeholder PIM proposal. Interested intervenors have up to and including June 7, 2024, within which to respond to the Company's Stakeholder PIM proposal and any such responses shall be in the form of written testimony. This will help ensure clarity of record, particularly given that the Company has provided written testimony in support of its Stakeholder PIM proposal.

17. In addition to the above, we invite the intervenors and Public Service to address in their respective filings another approach to addressing capital expenditures associated with Unit 3. More specifically, under this alternative approach, the Commission would allow the Public Service to place into rate base prudently incurred Unit 3 capital expenditures up to whatever level such capital expenditures were forecasted as part of the Phase II modeling process. For all other prudently incurred capital expenditures over and above the Phase II modeling forecasts, the

Commission would treat the expenditures like an expense item potentially eligible for full one-time cost recovery that could be litigated at the time of the next rate case. While this alternative approach might not be implemented here, the intent of treating capital expenditures as an expense would be to ensure that the Company does not earn its weighted average cost of capital on those expenditures. This proposal is intended to limit Public Service's ability to profit on capital expenditures that the Company did not accurately forecast. Parties are invited to address the proposal and its intent in their respective supplemental and responsive testimony filings, including what should be directed or addressed here and any other appropriate venue to address these considerations; *e.g.*, a future rate case.

18. As to Public Service's statements regarding the difficulties developing an emissions reduction PIM, we are frustrated at the Company's apparent inability to propose an emissions reduction PIM over two years after entering into the Phase I Settlement Agreement that contemplates such a PIM, the relevant provisions of which were subsequently approved in the Phase I Decision.<sup>25</sup> The lack of an emissions reduction PIM is all the more concerning given that the reduction of greenhouse gas emissions from the electric system is a critical priority. Public Service notes the number of PIMs that are currently in operation and suggests that there should be a more holistic consideration of the impact and benefits of the various PIMs. However, an emissions reduction PIM has the potential to comprehensively incentivize emissions reductions and costs savings throughout the Company's system in a way that is more straightforward and unified.

19. We invite the parties to address the emission reduction PIM in their responses to the Stakeholder PIM proposals, including the Company's statements regarding its inability to

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<sup>25</sup> See Phase I Settlement, ¶ 50; Phase I Decision, ¶ 389.



develop an emissions reduction PIM to date following the Phase I Settlement Agreement and Phase I Decision.

## II. ORDER

### A. The Commission Orders That:

1. Public Service Company of Colorado (Public Service) shall make a supplemental filing by May 29, 2024, that provides additional details regarding the forecasted and actual capital expenditures associated with Unit 3, consistent with the discussion above.

2. Intervenors shall have up to and including June 7, 2024, within which to respond to Public Service's proposed stakeholder performance incentive mechanism, and any such responses shall be in the form of written testimony, consistent with the discussion above.

3. This Decision is effective on its Mailed Date.

### B. **ADOPTED IN COMMISSIONERS' WEEKLY MEETING May 15, 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