

**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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**INTERIM COMMISSION DECISION ESTABLISHING  
PROCEDURAL SCHEDULE AND SCHEDULING REMOTE  
EVIDENTIARY HEARING**

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Issued Date: September 19, 2024

Adopted Date: September 18, 2024

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**I. BY THE COMMISSION**

**A. Statement**

1. On September 6, 2024, Public Service Company of Colorado (“Public Service” or the “Company”) filed a Motion to Approve CEP Delivery Plan, Establish Procedural Schedule,

for Variances from Certain Commission Rules and Decisions, and an Unopposed Request for Shortened Response Time regarding Procedural Schedule (“CEP Delivery Motion”).

2. Through this Decision, the Commission establishes a modified procedural schedule with limited discovery rights, refers discovery disputes to an Administrative Law Judge (“ALJ”), and schedules an *en banc* evidentiary hearing. In addition, we set a deadline of September 23, 2024, requesting procedural concerns regarding the inclusion of the Plains End power purchase agreement (“PPA”) in this Proceeding, or any other procedural concerns with the schedule established here regarding Public Service’s CEP Delivery Motion.

### **B. Procedural History**

3. Public Service initiated this proceeding by filing its Verified Application for Approval of its 2021 Electric Resource Plan (“ERP”) and Clean Energy Plan (“CEP”).

4. On August 3, 2022, the Commission issued Decision No. C22-0459 (“Phase I Decision”). Among other things, the Phase I Decision authorized Public Service to implement a competitive bidding process for acquiring cost-effective resources to meet its projected resource need from 2022 through 2028.

5. On January 23, 2024, the Commission issued Decision No. C24-0052 (“Phase II Decision”), approving the Company’s CEP with modifications. Among other things, the Phase II Decision authorized Public Service to pursue the acquisition of numerous storage and generation resources included in the Alternative Portfolio with further due diligence and contract negotiations. For each utility owned generation and storage project in the Alternative Portfolio, the Phase II Decision established a cost-to-construct performance incentive mechanism (“PIM”) to incentivize Public Service to build the projects at or below budget.<sup>1</sup>

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<sup>1</sup> Phase II Decision, p. 125.

6. On September 6, 2024, Public Service filed the CEP Delivery Motion, along with the testimony of Jack Ihle and several attachments. Among other things, the CEP Delivery Motion puts forth a proposed procedural schedule and limited discovery rights to facilitate the Commission's review of the Motion.

7. On September 10, 2024, Climax Molybdenum Company ("Climax") filed a Response to Public Service's proposed procedural schedule, which the Office of Utility Consumer Advocate ("UCA") and the Colorado Energy Consumers ("CEC") join. In the Response, Climax acknowledges the urgency of the CEP Delivery Plan but argues for extending the deadline for intervenor responses and increasing the amount of discovery that parties can propound. In its Response, Climax further states a hearing is preferred to a technical conference and recommends reserving two hearing days as a precaution.

8. No other parties filed a response opposing the Company's proposed procedural schedule.

**C. CEP Delivery Motion and the Response**

9. At a high level, in the CEP Delivery Motion, Public Service argues that global and national geopolitical and market forces require some adjustments to the CEP to ensure that the projects contemplated in the Alternative Portfolio can move forward.<sup>2</sup> Public Service categorizes its requests into three components. Component 1 consists of a two-stage process in which renewable and storage projects could request price flexibility. Under this process, developers (including the Company) could individually submit requests to a newly appointed Independent Auditor ("IA") to increase the price of their projects based on things such as unexpected supply chain difficulties, recent changes in tariff policy, or future changes in federal law. The IA would

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<sup>2</sup> CEP Delivery Motion, p. 2.

then verify whether the requested price increase, or any portion thereof, is justified and submit its verification decision to the Commission for review.<sup>3</sup> Under Stage 1 of this process, developers could submit price increase requests to the IA by December 31, 2024, based on a broad set of circumstances such as known and pending tariffs or duties, supply chain issues, or any other impacts of current market conditions.<sup>4</sup> Under Stage 2, developers could submit price increase requests to the IA based on a specified changes in federal law.<sup>5</sup>

10. Component 2 addresses the thermal resources contemplated in the Alternative Portfolio. For instance, Public Service requests the Commission approve the proposed replacement of Bid 0235, which was included in the Alternative Portfolio but subsequently failed. The Company also seeks authorization to not include the selective catalytic reduction (“SCR”) system that it originally planned for Bid 0989 (a 200 MW gas unit). More holistically, in Component 2 Public Service seeks assurance that it can move forward with the Company-owned thermal units under increased cost estimates and that the baseline for the cost-to-construct PIMs will be adjusted accordingly.

11. In Component 3, the Company requests approval to take certain actions to increase capacity in the short-term. Specifically, the Company requests a PPA extension for Bid 1061 and a PPA extension for Plains End (a 219 MW unit with a PPA that expires at the end of 2027) to increase the amount of firm capacity on the system. Similarly, Public Service seeks to the interruptible service option credit in an attempt to increase demand response capacity.

12. As an alternative to the first two components, Public Service suggests the Commission treat utility-owned projects as “a distinct portfolio.” Under this alternative, the

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<sup>3</sup> Hr. Ex. 166 (Ihle), pp. 40-41.

<sup>4</sup> Hr. Ex. 166 (Ihle), pp. 35-36.

<sup>5</sup> Hr. Ex. 166 (Ihle), p. 52.

projects in the utility-owned portfolio would keep the same construction costs that the Phase II Decision contemplates, but instead of several project-specific PIMs, there would be one portfolio-wide PIM.<sup>6</sup>

13. In terms of process, Public Service asks the Commission to adopt an expedited procedural schedule, which would require intervenor responses by October 4, 2024, a Company reply by October 18, 2024, a settlement deadline of October 25, 2024, and a hearing or technical conference the week of October 28.<sup>7</sup>

14. While acknowledging there is typically no discovery in Phase II, the Company requests that the Commission allow for limited discovery and set a limit of 20 interrogatories per party, and the Company could serve 15 interrogatories to each intervenor that files responsive comments or testimony. The Company also proposes that discovery responses will be due within seven business days for discovery requests on the Company's filing, while any party responses to discovery on response filings would be due within five business days.<sup>8</sup>

15. In Climax's Response, Climax argues that "due process requires sufficient time for intervenors to review the extensive and novel Delivery Plan and to provide appropriate critiques and suggestions, and for the Commission to reach a considered decision on [Public Service's] Motion based on a complete record."<sup>9</sup> The Response specifically requests that the deadline for responses be set at 28 days after the Commission decision setting the procedural schedule, with the Company's reply due 14 days later. Regarding discovery, the Response requests increasing the

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<sup>6</sup> CEP Delivery Motion, pp. 2-3.

<sup>7</sup> CEP Delivery Motion, p. 13.

<sup>8</sup> CEP Delivery Motion, p. 12.

<sup>9</sup> Climax's Response, p. 1.

party requests to Public Service to 30 individual requests, including interrogatories and requests for production of documents and admissions.

**D. Findings and Conclusions**

16. The Commission is concerned with the Company's apparent lack of progress implementing the CEP. As Public Service notes in the CEP Delivery Motion, the bids comprising the Alternative Portfolio were submitted 17 months ago in March 2023, and our Phase II Decision came out in January 2024. Despite this passage of time, it is unclear from the filings whether the Company has executed any contracts to develop the PPA projects. To ensure greater transparency on this point, we direct Public Service to submit a supplemental filing by October 4, 2024, that provides a comprehensive status report for each project and backup project included in the Alternative Portfolio.<sup>10</sup> This status report shall include the current status for each bid and backup bid and specify whether the bid/backup bid requested a price increase and, if so, the amount of the price increase. Assuming our inference is correct that Public Service has not signed any PPA contracts, the Company shall explain why it has not done so, especially if there are counterparties who are willing to move forward at the as-bid price contemplated in the Phase II Decision.

17. We similarly find that more transparency regarding utility-owned projects (both self-build and build-transfer) is necessary. This is especially true given Public Service's proposal to switch to a portfolio-wide cost-to-construct PIM in lieu of seeking price increases. Accordingly, in the supplemental filing due by October 4, 2024, the Company shall provide the most current cost estimates for the best available option for all utility-owned projects either in the approved

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<sup>10</sup> This status report shall include the supplemental backup bids set forth in the Notice Regarding Updated List of Projects in the Approved Portfolio and Updated List of Backup Bids that Public Service filed on April 12, 2024. We anticipate this filing will be made consistent with determinations on highly confidential information.

Alternative Portfolio or in the backup or supplemental backup portfolio. The Company should clearly designate the overage or cost-savings for each project.

18. In addition to this supplemental filing from Public Service, we request the parties address our additional concerns through the course of the procedural schedule that this Decision establishes. To begin, we find it notable that Public Service is not seeking price relief for its own solar and solar plus storage projects (the Arroyo 2 and the Rocky Mountain projects). This suggests that pricing relief may not be needed for solar and storage projects. Along these lines, we would like to hear from the industry and stakeholders as to whether equipment vendors and developers can currently import solar equipment without much incremental tariff price or other risk, especially since it appears that the proposed solar tariff increases and other federal policy changes are only forward looking.

19. We similarly would like to hear from the parties on whether solar module prices have declined significantly in the prior months as solar supply chains have adjusted to the tariffs and Chinese module production has ramped up. Likewise, we are interested in learning whether there are additional supplies of batteries for utility-scale storage projects due to increases in Chinese EV and battery production and corresponding decreases in EV sales in the US.

20. Public Service suggests that higher interest rates are another factor negatively impacting project development.<sup>11</sup> It is unclear to us whether interest rates have risen as dramatically since bids were developed and submitted as the Company argues,<sup>12</sup> and we request that the parties address this issue in their responses.

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<sup>11</sup> Hr. Ex. 166 (Ihle), p. 15.

<sup>12</sup> In March of 2023 (when bids were submitted) the yield on 10-Year US Securities was about four percent and had ranged between 3.5 percent and 4.2 percent for the prior six months. Currently, the yield on 10-Year US Securities is toward the lower end of that range at about 3.7 percent. Parties are invited to provide information and testimony regarding these assumptions and their impact on the decisions to be made here.

21. In short, while there might be some offsetting price increases in things like transformers, overall we remain curious whether such increases are as large as Public Service suggests. We encourage the stakeholders to share their views on whether any price adjustments for solar and storage projects are necessary or whether they can move forward consistent with the Phase II bids—similar to the Company’s Rocky Mountain and Arroyo 2 projects.

22. The testimony supporting the CEP Delivery Motion provides little information regarding price increases specific to wind energy. However, it appears most of the requested pricing relief for renewable and storage projects is for three Company-owned wind projects where Public Service seems to be anticipating a 10-12 percent cost increase.<sup>13</sup> Perhaps wind costs have gone up, but the size of the increases associated with the three Company-owned projects does not seem to match the main thrust of the Company’s testimony. Even more curious, while the testimony indicates that the three Company-owned wind projects will need 10-12 percent cost increases, the PPA wind project is listed as a much smaller six percent cost increase. Again, we encourage stakeholders to provide more guidance regarding this issue and what is happening with wind prices in the market.

23. We also have several concerns regarding the proposed two-stage process under Component 1 in which an IA verifies requests for price relief from individual developers that we would like the stakeholders to address. Given our prior experience in this Proceeding, we fear the Company and IA may be unable to timely deliver reviews of project-specific cost increases. We also see potential problems with this project-specific price relief given that Company-owned projects are competing directly with third-party PPA bidders. To the extent that any price adjustment is necessary, a potential alternative is to equally provide a \$/MWh or \$/kw-month price

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<sup>13</sup> Hr. Ex. 166 (Ihle), p. 46 (Table JWI-ST-1).



increase for all projects that use a specific technology. As for the potential price relief provided in Stage 2, it seems problematic to set a fixed price increase now given that we cannot know how federal law could change in the future. On this point, we would like to hear from stakeholders about developing alternative contract language in which this Commission approves some type of force majeure price re-opener in the event of a material future change in tax law.

24. Assuming the Commission does ultimately move forward with the project-specific process contemplated in Component 1, we would like to hear stakeholders' views on how to better maintain competitive tension. For example, we are curious whether the IA should recalculate each project's levelized cost of energy ("LEC") based on the project's requested price increase. If the recalculated LEC values show that a backup project is more economical than a project in the Alternative Portfolio, the Commission could re-rank the bids and move forward with the backup project.

25. Moving to Components 2 and 3 of the Company's CEP Delivery proposal, which largely address thermal resources, we are concerned about the Company's plan to replace Bid 0235 (a PPA gas resource) with Bid 1000 (a Company-owned gas resource). In the Phase II Decision, the Commission noted several parties and numerous public comments raised concerns that new gas resources will become stranded. With its inclusion of a PPA gas resource, the approved Alternative Portfolio "reduce[d] the risks that customers will be saddled with future costs associated with Company-owned gas resources."<sup>14</sup> We remain concerned with the risk that Company-owned gas resources, and particularly new-build resources, could become stranded assets, and Public Service's proposal to move forward with Bid 1000 exasperates these concerns.

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<sup>14</sup> Phase II Decision, ¶ 108.

We encourage stakeholders in this Proceeding to address these concerns, including by investigating whether there are alternative PPA gas resources available.

26. With regard to the potential price increases under both Component 1 and Component 2, the Commission wants to avoid creating an ERP process in which developers underbid projects initially with the expectation they will be able to obtain price increases later. The as-bid prices that the Phase II Decision contemplated for the various projects remain important. As for the utility-owned projects seeking price relief under the cost-to-construct PIM, we remind the stakeholders that the cost-to-construct PIM already contains a deadband in which deviations from the baseline incur no incentive or disincentive. We are hesitant to move forward with adjustments to the cost-to-construct PIM baselines given that one of the purposes of the PIM is to disincentive cost increases.

27. One of the specific proposals Public Service puts forth in Component 3 is an extension of the Plains End PPA. It appears, however, that the Plains End PPA extension was not one of the projects bid into this ERP. While we have some precedent for price adjustment and re-bidding considerations as necessary following a Phase II decision, we also recognize the similarly time-sensitive processes to address near-term adequacy could be addressed through separate filings. We are open to separating out the Plains End PPA such that it can receive separate and timely consideration. Given that no party responded in opposition to inclusion of the Plains End PPA or any other consideration raised by the CEP Delivery Motion, we maintain considerations within this Proceeding. Parties, including the Company, are invited to request separate consideration of the Plains End PPA—and may raise other procedural concerns, including specifically with the hearing dates set here, regarding Public Service’s CEP Delivery Motion— by

September 23, 2024. We acknowledge this is an aggressive timeframe, but time is of the essence. We presume there are no concerns with the inclusion of the considerations raised given the limited Response provided by Climax, with joint representations from CEC and UCA, and that no other party filed a response. However, we raise the Commission's openness to considering this matter separately given the unique circumstances here, and that if the Plains End PPA is to be considered separately, an appropriate, separate filing from the Company would be needed soon.

28. We also agree with Climax and respondents that indicate anticipating a hearing as preferred to a mere technical conference. We therefore encourage interested parties to provide testimony in support of their positions and filings. We also agree that reserving two days is appropriate given the items raised through the CEP Delivery Motion. To aid our consideration of the Company's CEP Delivery Motion, the Commission therefore schedules an *en banc* remote evidentiary hearing for November 7-8, 2024. We further establish the following procedural schedule:

Date	Deadline/Action
September 23, 2024	Procedural Concerns to split extension request, or further revise hearing dates and timeline
October 4, 2024	Public Service's supplemental filing
October 11, 2024	Intervenor responses to the Company's CEP Delivery Motion and the issues raised in this Decision
October 25, 2024	Company's reply
November 1, 2024, at 12:00 p.m.	Settlement Deadline
November 1, 2024	Corrections to pre-filed testimony and exhibits and any prehearing motions
November 5, 2024, at 12:00 p.m.	Cross-Examination Matrix
November 7-8, 2024	Remote Evidentiary Hearing

29. This schedule balances the need for expedited consideration with the request for an expanded timeline, including reserving a two-day hearing.<sup>15</sup>

30. As for discovery, each intervenor shall have 25 individual requests to Public Service, including interrogatories and requests for production of documents and admissions. Public Service shall have 20 individual requests to each intervenor that files a response to the CEP Delivery Motion. Discovery responses shall be due within seven business days for discovery requests on the Company's filings, while any party responses to the Company's discovery on response filings shall be due within five business days. All future discovery disputes are referred to an ALJ.

31. Our decision regarding the appropriate procedural deadlines and discovery limits reflects a compromise approach that balances the need for expediency and the concerns raised in

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<sup>15</sup> The Commission's schedule is limited in the coming months. If parties have significant concerns with the dates proposed there, are not many remaining two-day hearing opportunities before the end of the calendar year. Nevertheless, we invite parties to promptly notify the Commission if these dates are impossible and request a reply no later than September 23, 2024.

Climax's Response. We acknowledge the urgency of the Company's CEP Delivery Motion but at the same time agree with Climax that intervenors must have sufficient time to review the Company's CEP Delivery proposals and provide appropriate critiques and suggestions.

32. As noted, in anticipation of hearing, corrections to pre-filed testimony and exhibits, any prehearing motions shall be filed no later than November 1, 2024. In addition, parties shall file a cross-examination matrix by November 5, 2024, by 12:00 p.m. Finally, Decision No. C24-0587-I, issued August 14, 2024, includes two attachments. Attachment A to Decision No. C24-0587-I includes important technical information and requirements to facilitate holding the hearing remotely. Attachment B to Decision No. C24-0587-I includes information and requirements to facilitate electronic evidentiary presentations at the hearing. The directives within Attachment A and Attachment B to Decision No. C24-0587-I remain in effect and shall apply to the remote evidentiary hearing set for November 7-8, 2024, regarding testimony and filings pertaining to the CEP Delivery Motion consideration.

## **II. ORDER**

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

1. The procedural schedule set forth in the Motion to Approve CEP Delivery Plan, Establish Procedural Schedule, for Variances from Certain Commission Rules and Decisions, and an Unopposed Request for Shortened Response Time regarding Procedural Schedule ("CEP Delivery Motion") that Public Service Company of Colorado ("Public Service") filed on September 6, 2024, is adopted, with the modifications and additions set forth in the discussion above.

2. Parties seeking to raise procedural concerns regarding the CEP Delivery Motion, including whether specific extension requests should be filed outside of this process and the hearing dates established by this Decision, shall file an appropriate pleading no later than September 23, 2024, consistent with the discussion above.

3. Public Service shall file a Comprehensive Status Report regarding each bid and backup bid and on the current cost estimates for all utility-owned projects no later than October 4, 2024, consistent with the discussion above.

4. Parties shall file responsive pleadings, and are encouraged to provide supportive testimony, by October 11, 2024.

5. Public Service shall file its reply by October 25, 2024.

6. Settlement filings shall be provided by November 1, 2024, at 12:00 p.m.

7. Parties shall file corrections to pre-filed testimony and exhibits and any prehearing motions by November 1, 2024.

8. Parties shall file a cross-examination matrix by November 5, 2024, at 12:00 p.m.

9. A remote evidentiary hearing is scheduled in this Proceeding as follows:

DATE: November 7-8, 2024

TIME: 9:00 a.m. to 5:00 p.m.

METHOD: Join by videoconference using Zoom at the link to be provided to parties by e-mail.

10. All participants must comply with the requirements in Attachments A and B to Decision No. C24-0587-I, issued August 14, 2024.

11. The parties and witnesses are required to participate in the evidentiary hearing by video conference using Zoom. The parties must ensure that they and their witnesses are ready and

able to participate in the evidentiary hearing by video conference, including presenting evidence electronically during the hearing using Zoom.

12. The parties are responsible for sharing the Zoom link, meeting ID code, and passcode to witnesses and others participating in the hearing. Participants in the hearing may not distribute the link, meeting ID code, and passcode to anyone not participating in the hearing.

13. All future discovery disputes are referred to an Administrative Law Judge.

14. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN MEETING AND COMMISSIONERS' WEEKLY MEETING  
September 18, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners