

Decision No. C24-0746-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0141E

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

**INTERIM COMMISSION DECISION DIRECTING
INFORMATION IN REPLY FILING**

Issued Date: October 16, 2024

Adopted Date: October 16, 2024

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission directs Public Service Company of Colorado (“Public Service” or the “Company”) to include additional information in the Company’s reply that is due on October 25, 2024.

B. Background and Discussion

2. On September 6, 2024, Public Service 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”).

3. On September 19, 2024, the Commission issued Decision No. C24-0678-I. Among other things, Decision No. C24-0678-I established a procedural schedule in which the Company was required to file supplemental information on October 4, 2024, intervenors were

invited to respond by October 11, 2024, and the deadline for Public Service to file a reply is October 25, 2024.

4. In addition to setting a procedural schedule, Decision No. C24-0678-I requested the parties address several topics. For instance, we asked 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.¹

5. In Decision No. C24-0699-I,² the Commission addressed certain procedural requests Utility Consumer Advocate (“UCA”) raised and directed Public Service to provide additional information.

6. Consistent with the established procedural schedule, on October 4, 2024, Public Service submitted supplemental information, and on October 11, 2024, several intervenors provided responses.

7. In its October 4, 2024, supplemental filing, the Company opposes the idea of including change to law as a force majeure circumstance in the model power purchase agreement (“PPA”). Instead, Public Service expresses support for modifying the model PPA to add provisions that would provide potential price relief for a specified change in law with the goal of providing certainty to developers.³ The Company does not provide the specific PPA language that would accomplish this.

8. In addition, in its supplemental filing, Public Service suggests that one of the reasons it has been unable to execute any PPAs is because of the high amount of requested concessions developers have requested as part of the negotiation process. The Company states it

¹ Decision No. C24-0678-I, ¶ 23.

² Issued September 26, 2024.

³ Hr. Ex. 166 (Attachment JWI-16HC), pp. 15-16.

has “faced numerous requests for changes that place an unacceptable level of risk on the Company—and in turn on our customers.”⁴ Again, however, Public Service does not provide the specific PPA language at issue—either what developers are requesting, or what Public Service insists must be in the contract.

9. As part of its reply due on October 25, 2024, we direct Public Service to provide the relevant PPA and build transfer agreement language as to both issues. Specifically, the Company must produce the additional contractual provisions that would provide potential price relief for a specified change in law and where such provisions would be located within the larger contract. In addition, the Company shall provide an example of the requested PPA provisions that pose an unacceptable level of risk to the Company. Public Service shall provide examples of the PPA language the Company is proposing and the specific modifications the developers are seeking. Both the Company’s language and the requested modifications shall be compared to the relevant language in the model PPA.

10. To be clear, we are not requiring Public Service to submit additional briefing on these concepts beyond what it is preparing for reply.⁵ Rather, the directive is for the Company to provide the actual contractual language given our concerns raised in prior orders, and filing arguments to date. Having this contractual language set out in the record prior to the hearing could facilitate party and Commissioner questions and help eliminate future delays.

⁴ Hr. Ex. 166 (Attachment JWI-16HC), p. 4.

⁵ On the other hand, Public Service is in no way discouraged from providing additional commentary on these topics if it so desires.

II. ORDER

A. It Is Ordered That:

1. Public Service Company of Colorado shall provide the relevant power purchase agreement language in its reply on October 25, 2024, consistent with the above discussion.

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

B. **ADOPTED IN MEETING AND COMMISSIONERS' WEEKLY MEETING October 16, 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