

Decision No. C21-0315-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 SETTING THE APPLICATION FOR HEARING BEFORE THE COMMISSION *EN BANC*; ADDRESSING INTERVENTIONS; ESTABLISHING PARTIES AND *AMICUS CURIAE*; DENYING LATE-FILED MOTION AS MOOT; SETTING RESPONSE TIME TO MOTIONS; REQUIRING CONFERRAL AND FILING OF PROPOSED PROCEDURAL SCHEDULE; AND SCHEDULING A PREHEARING CONFERENCE

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I. BY THE COMMISSION

A. Statement

1. On March 31, 2021, Public Service Company of Colorado (Public Service or Company) filed a Verified Application for Approval of its 2021 Electric Resource Plan and Clean Energy Plan (Application), seeking Commission approval of Phase I of the Company’s 2021 Electric Resource Plan (ERP) and Clean Energy Plan (CEP). Concurrently with the filing of the Application, Public Service filed an Omnibus Motion for Extraordinary Protection of Highly Confidential Information, and for Partial Waiver of Rules 3612(a) and 3611(h)(V), and waiver of Rule 3608(c)(III) (Omnibus Motion).

2. This Decision sets the Application for hearing before the Commission *en banc*, and establishes the parties in this matter and Black Hills Colorado Electric, LLC (Black Hills) as *amicus curiae*. Intervention requests representing individual ratepayer and small business interests filed by Ms. Leslie Glustrom and the Coalition of Ratepayers (Coalition), are denied for the reasons discussed below.

3. The established parties, including the Company, are permitted through May 28, 2021, to respond to Public Service’s Omnibus Motion, and the Unopposed Motion from the Colorado Department of Public Health and Environment (CDPHE) filed on April 29, 2021, for

limited participation. The Commission intends to discuss further requiring supplemental direct testimony from the Company. To accommodate that discussion and potential direction from the Commission in early June of 2021, through this Decision, we order Public Service to confer with the parties to develop a proposed procedural schedule and discovery procedures no later than June 18, 2021,¹ and set a remote prehearing conference for June 23, 2021.

B. Application

4. Public Service filed its Application in accordance with the Commission's Electric Resource Planning (ERP Rules) set forth at 4 *Code of Colorado Regulations* (CCR) 723-3-3600, *et seq.* of the Commission's Rules Regulating Electric Utilities, as well as House Bill (HB) 19-1261 and Senate Bill (SB) 19-236. The Commission's ERP Rules require a regular, periodic examination of an electric utility's energy sales and demand forecasts as compared to an assessment of its existing resources to ensure that sufficient generation will be available to meet customer needs in the future. The ERP process includes two phases. In Phase I, the Commission reviews and may approve, or approve with modifications, the utility's plan to acquire new utility resources. In Phase II, the utility brings forward actual portfolios assembled from bids provided during the competitive acquisition process, and the Commission determines whether the utility should be granted a presumption of prudence for pursuing the acquisition of particular resources.

5. Under SB 19-236, the Company notes that its Application for the 2021 ERP and CEP is the first ERP cycle with mandatory clean energy targets. Among other requirements, SB 19-236 requires the Company to file a plan that achieves an 80 percent reduction in CO₂

¹ As discussed further below, the Company is directed to confer and propose a procedural schedule that addresses the parties' preferences regarding CDPHE's engagement in the proceeding, and any Commission determination regarding CDPHE's status as a participant. In addition, the Company is directed to provide in the proposed schedule its planned coordination with the Colorado Pathways Project Application proceeding in Proceeding No. 21A-0096E, indicating how it will address or waive any statutory timelines as needed to accommodate the schedule in this ERP proceeding.

from 2005 levels by 2030, which the Company equates to a plan that emits approximately 5.4 million short tons of CO₂ in 2030.²

6. Public Service asserts that its preferred resource plan will meet its projected resource need while exceeding SB 19-236's clean energy targets. Specifically, the Company submits that its preferred plan will result in an 85 percent emission reduction by 2030 and deliver nearly 80 percent of its customers' energy by 2030 from renewable resources.³ At a high level, the Company's proposed plan represents that it accomplishes these emission reductions by acquiring new renewable energy resources and retiring some coal and natural gas generation.

7. In accordance with SB 19-236, the Company set a resource acquisition period (RAP) for its ERP and CEP from 2021 through 2030. By 2030, the Company is projecting a resource need of 1,747 megawatts (MW), after accounting for its early coal retirements under its preferred plan. Public Service states its projected resource need is driven by a combination of growth in native demand, retiring resources (including the expiration of power purchase agreements (PPAs)), and the accelerated retirement of other resources. Specifically, under the Company's preferred coal transition, the retirements of Hayden 1 and 2 will be accelerated to 2028 and 2027, the retirement of Craig 2 will be accelerated to 2028, Pawnee will be converted from coal to natural gas by the end of 2028, and operations at Comanche 3 will be reduced to approximately 33 percent capacity beginning in 2030, with full retirement at 2040.⁴

8. The Company proposes to meet its projected resource needs by acquiring approximately 2,300 MW of wind resources, 1,600 MW of large-scale solar, 400 MW of battery

² Hearing Exhibit 101, Attachment AKJ-1 (Volume 1), p. 14.

³ Hearing Exhibit 101, Direct Testimony of Alice Jackson, p. 13.

⁴ Hearing Exhibit 101, Direct Testimony of Alice Jackson, p. 14.

storage, and 1,300 MW of flexible dispatchable generation. In addition, Public Service has accounted for 1,158 MW of distributed energy resources coming online during the RAP.⁵ As with prior ERPs, the Company plans to acquire these resources via an all-source competitive solicitation in Phase II of this Proceeding.

9. In connection with the proposed acquisition of new wind and solar resources, the Company notes that in Proceeding No. 21A-0096E it is seeking a certificate of public convenience and necessity (CPCN) for the Colorado Power Pathway—a 560-mile, 345 kV double circuit transmission project. The Colorado Power Pathway interconnects the Eastern Plains and Southern Colorado to Public Service’s load centers, providing developers the ability to develop and bid cost-effective generation projects into these renewable-rich areas of the state.⁶ Public Service asserts that “the existing transmission network, especially in eastern Colorado, is not capable of integrating the magnitude of new resources needed to implement the Company’s 2021 ERP & CEP.”⁷ The Company hopes that the CPCN proceeding and this ERP/CEP Proceeding will run parallel and complement each other such that in Phase II of this Proceeding, bidders may propose to interconnect to the Pathway Project without taking on additional transmission cost burdens in the levelized energy cost of their bids.⁸

10. Public Service ultimately requests that the Commission approve Phase I of the Company’s 2021 ERP and CEP. As part of this approval, the Company requests that the Commission make numerous findings and sub-approvals such as approval of the Company’s proposed Phase II all-source competitive acquisition and bid evaluation process; approval of the

⁵ Hearing Exhibit 101, Direct Testimony of Alice Jackson, p. 16.

⁶ Hearing Exhibit 103, Direct Testimony of Brooke Trammell, p. 11.

⁷ Hearing Exhibit 107, Direct Testimony of Hari Singh, pp. 27-28.

⁸ Hearing Exhibit 102, Direct Testimony of Jack Ihle, p. 56; Hearing Exhibit 107, Direct Testimony of Hari Singh, p. 61.

requests for proposals (RFPs) and model contracts; approval of the Company's preferred coal transitions cost-recovery mechanisms regarding Hayden 1 and 2, Craig 2, Pawnee, and Comanche 3; and approval to initiate the CEP rider after the issuance of the Phase II decision.⁹

C. Completeness and Setting the Application for Hearing

11. On May 18, 2021, by operation of Rule 4 CCR 723-1-1303(c)(III) of the Rules of Practice and Procedure, the Application was deemed complete for purposes of § 40-6-109.5, C.R.S.

12. Several entities seeking to intervene in this case request that the Commission set the Application for hearing, including the Staff of the Colorado Public Utilities Commission (Staff) and the Colorado Office of Consumer Counsel (OCC). We find good cause to set the Application for hearing, and we will hear this matter *en banc* for purposes of reviewing and rendering a decision regarding the contents of the ERP.

13. Rule 4 CCR 723-3-3617(b) states that: "Based upon the evidence of the record, the Commission shall issue a written decision approving, disapproving, or ordering modifications, in whole or in part, to the utility's plan." Subpart (c) of Rule 4 CCR 723-3-3617 further states that:

If the record contains sufficient evidence, the Commission shall specifically approve or modify: the utility's assessment of need for additional resources in the resource acquisition period; the utility's plans for acquiring additional resources through an all-source competitive acquisition process or through an alternative acquisition process; components of the utility's proposed RFP, such as the model contracts and the proposed evaluation criteria; and, the alternate scenarios for assessing the costs and benefits from the potential acquisition of increasing amounts of renewable energy resources, demand-side resources, or Section 123 resources.

⁹ Application, pp. 7-8.

14. A hearing in this matter is necessary for us to render a “Phase I” decision in accordance with Rule 4 CCR 723-3-3617(c).

15. Consistent with past ERP proceedings, we anticipate the need to render a “Phase II” decision in accordance with Rule 4 CCR 723-3-3613(h), which states: “Within 90 days after the receipt of the utility’s 120-day report under paragraph 3613(d), the Commission shall issue a written decision approving, conditioning, modifying, or rejecting the utility’s preferred cost-effective resource plan, which decision shall establish the final cost-effective resource plan.” A Phase I hearing is required for us to administer the Phase II ERP process as set forth in Commission rules.

D. Interventions

1. Interventions as of Right

16. Staff, the OCC, and the Colorado Energy Office (CEO) each filed notices of intervention by right.

17. OCC represents the public interest and specific interests of residential, small business, and agricultural customers under § 40-6.5-104, C.R.S. CEO represents the Colorado Governor’s Office, including advocating for policies that support statewide greenhouse gas emissions reductions; Colorado Governor Jared Polis’ priorities for setting Colorado on a path to 100 percent renewable energy; and positioning Colorado as a leader in the clean energy economy. Staff filed its notice of intervention as well on May 10, 2021, and similar to OCC and CEO, provides a detailed list of areas it requests the Commission consider and notes a number of areas of concern it intends to investigate.

18. Pursuant to Rule 4 CCR 723-1-1401(b) no decision is required in response to appropriately filed notices of intervention by right. The notices of intervention of right are accepted. OCC, Staff, and CEO are parties to this Proceeding.

2. Permissive Intervenors

19. Several potential parties also requested permissive intervention, including: Rocky Mountain Environmental Labor Coalition and the Colorado Building and Construction Trades Council, AFL-CIO (jointly RMELC/CBCTC); International Brotherhood of Electrical Workers, Local 111 (Local 111); Intermountain Rural Electric Association (IREA); Holy Cross Electric Association (Holy Cross); Climax Molybdenum Company (Climax); Colorado Energy Consumers (CEC); Walmart Inc. (Walmart); Colorado Renewable Energy Society (CRE); Western Resource Advocates (WRA); Natural Resources Defense Council (NRDC) and Sierra Club (collectively the Conservation Coalition); City and County of Denver (Denver); Pueblo County; City of Pueblo and Board of Water Works of Pueblo (Pueblo Water) (jointly Pueblo City and Water); and City of Boulder (Boulder); Colorado Solar and Storage Association and Solar Energy Industries Association (jointly COSSA/SEIA); Colorado Independent Energy Association (CIEA); Onward Energy Management (Onward); Colorado Oil and Gas Association (COGA); Interwest Energy Alliance (Interwest); Vote Solar; Ms. Leslie Glustrom; and the Coalition.

20. Public Service timely filed a response in opposition to and addressing Ms. Leslie Glustrom and the Coalition's respective filings. On May 12, 2021, the OCC and CEO jointly filed a late response and motion addressing the Coalition's requested intervention.

21. RMELC/CBCTC represent the interests of workers and unions and advocate on behalf of environmental and labor interests. RMELC/CBCTC state an interest in the ERP processes that require utilities to provide the Commission with Best Value Employment

Metrics (BVEM) from bidders, and claim a specialized expertise in evaluating BVEM, and that their members will be directly affected by the plans, especially regarding the closing of coal plants and the construction of new generation facilities.

22. Local 111 includes in its intervention that it represents approximately 1900 Public Service employees, and claims the Application may directly affect the way the Company deals with its bargaining unit employees in regard to their terms and conditions of employment.

23. IREA is a cooperative electric association and wholesale purchaser of electric power from Public Service, as well as a joint owner of the Comanche 3 facilities. IREA states that its interests may be aligned on certain issues with other co-op electric associations that receive wholesale power from the Company, but as the largest cooperative in Colorado and as joint owner of Comanche 3, IREA claims a unique pecuniary and tangible interest in the outcome of the Proceeding.

24. Holy Cross is a cooperative electric association that purchases a substantial portion of its wholesale electric power and energy from Public Service, and states a pecuniary and tangible interest in the Proceeding that will likely affect its rates.

25. Climax operates the Climax and Henderson molybdenum mines and claims a unique pecuniary and tangible interest in the Proceeding as one of Public Service's largest electric customers.

26. CEC is an association of corporate entities that purchase electricity from Public Service and, as "some of PSCo's largest industrial customers and major economic engines in

Colorado,”¹⁰ CEC claims its members have a pecuniary and tangible interest in the outcome of the ERP proceeding that will have reliability and affordability rate impacts.

27. Walmart operates 106 retail units and 2 distribution centers in Colorado, and is a large commercial customer of Public Service (with 55 retail stores and facilities in the Company’s territory), and claims its business and operations will likely be directly impacted by the approval of the ERP.

28. CRES is a nonprofit promoting energy efficiency and renewable energy, including advocacy for a carbon-neutral Colorado powered by 100 percent renewable energy. CRES states its interest in representing its members regarding the expansion of renewable energy, and notes that while it represents residential ratepayers and small businesses, it is not filing as an individual customer; nevertheless it notes its interests are not aligned with OCC’s broad public interest mandate, and are focused on the “singular interest in promoting renewable energy of all types in its effort to achieve a carbon-neutral Colorado.”¹¹

29. WRA is a nonprofit conservation organization and claims a tangible interest in protecting the environment through reduction of emissions from the electricity sector. WRA’s intervention pleading identifies specific components of the Company’s filing that it believes directly impact the environment through decarbonization.

30. NRDC and Sierra Club are nonprofit organizations dedicated to the protection of the environment and public health, and state a pecuniary and tangible interest in air quality, public health, and clean, affordable energy.

¹⁰ CEC Intervention at ¶ 7.

¹¹ CRES Intervention at ¶ 5.

31. Denver is a home rule city and county that has a franchise agreement with Public Service relating to the provision of electricity. Denver states it is probable that the Company will seek a rate increase as a result of the implementation of the CEP, which will substantially affect Denver's pecuniary and tangible interests.

32. Pueblo County states that the early closure of Comanche 3 will have a pecuniary and tangible impact on Pueblo County, including that it currently provides approximately \$17 million of annual tax revenues to the county as well as good paying jobs for its citizens.

33. Pueblo City and Water "are hosts of [the Company's] Comanche Generating Station"¹² and Pueblo Water supplies potable water services to the city, including non-potable service to the Comanche Generating Station. Both state a pecuniary and tangible interest in the outcome of this Proceeding in which Public Service seeks approval of early decommissioning of Comanche 3.

34. Boulder is a home rule city and municipal corporation, that is also a large customer of Public Service, and states a pecuniary and tangible interest in the outcome. Within its filing, Boulder "applauds the efforts of Public Service to meet and exceed the greenhouse gas emission reduction requirements of state legislation while focusing on equitable outcomes for all stakeholders."

35. COSSA/SEIA are trade organizations representing solar and storage providers, and renewable energy users, and therefore claim a pecuniary and tangible interest in the ERP proceeding on behalf of their members' business interests.

¹² Pueblo City and Water Intervention at ¶ 2.

36. CIEA is a trade association of independent power producer (IPP) member companies and other entities whose mission is to foster transparent and competitive acquisitions of cost-effective generation resources for the benefit of its members and Colorado ratepayers.

37. COGA is a trade association representing the oil and natural gas industry and states a pecuniary and tangible interest, particularly given Public Service's preferred plan (portfolio 7) proposes to convert the Pawnee power plant to natural gas in 2027, and notes a "critical role" of natural gas in the CEP "to provide the reliability needed to back up the wind and solar resources."¹³ COGA represents that the decisions made in the Proceeding will affect "all aspects of the natural gas business and markets."¹⁴

38. Interwest claims a pecuniary and tangible interest on behalf of its members that "are likely currently developing wind, solar, and energy storage facilities in Colorado, and they will likely submit proposals to respond to the [RFP] to be issued in this proceeding."¹⁵ Interwest further claims an interest on behalf of its non-governmental conservation members given the Company's goal to reach nearly 85 percent reduction in carbon emissions "sets a new landmark for climate action around the West."¹⁶

39. Onward is an IPP that operates 43 wind, solar, and natural gas generation projects in 16 states, with 3 power facilities in Colorado that sell energy and capacity through PPAs to Public Service: the Arapahoe Plant in Denver (expiring in 2023); Fountain Valley Plant in Fountain (expiring in 2032); and Comanche Solar in Pueblo (expiring in 2041). Onward

¹³ COGA Intervention at ¶ 3.

¹⁴ *Id.* at ¶ 4.

¹⁵ Interwest Intervention at pp. 3-4.

¹⁶ *Id.* p. 4.

intervenes to “protect its business interests in Colorado, with regard to both its existing facilities and new development opportunities.”¹⁷

40. Ms. Glustrom is an individual seeking *pro se* intervenor status. In her pleading, Ms. Glustrom cites §§ 40-6-109(1) and 40-6.5-104(2), C.R.S., and argues that she is entitled to be heard. She notes that she has been granted *pro se* intervenor status in numerous Commission proceedings. Substantively, she includes arguments regarding coal and supply issues and discount rate considerations, claiming that “the coal supply analysis presented by [Public Service] is incomplete and very misleading.”¹⁸ Ms. Glustrom claims that, under Rule 1401(c), she has a pecuniary and tangible interest as a customer and shareholder, and that she has a profound interest in our planet, nature, and the lives of her children, grandchildren, and the people of the City of Pueblo.

41. In its response to Ms. Glustrom’s intervention,¹⁹ the Company claims that her motion “falls short” of the requirements for permissive intervention in Rule 1401(c), and that the motion should be denied, consistent with past Commission decisions denying Ms. Glustrom’s interventions.

42. The Coalition states that it is “an unincorporated association of business and non-profit entities authorized and in good standing to transact business within Colorado.”²⁰ Specifically, it states that its members are “employers that operate businesses within the service territory of [Public Service] and purchase electricity and related energy services from [Public

¹⁷ Onward Intervention at ¶ 8.

¹⁸ Glustrom Intervention at p. 9.

¹⁹ Public Service’s May 7, 2021, filing responds to only Ms. Glustrom and the Coalition’s intervention.

²⁰ Coalition Intervention at ¶ 3.

Service]”²¹ and are primarily small businesses. The Coalition claims that no other party represents its interests “to obtain the most economical, reliable electricity produced by a fuel mix that complies with state and federal law.”²² The Coalition states that, “as evidenced” by its participation in the Company’s most recent ERP and related proceeding, the “Coalitions’ interests are distinct and often not aligned with other parties such as Staff, the CEO, or the OCC.”²³

43. Public Service’s response claims that the Coalition filing does not meet the standards of Rule 1401(c), including that it fails to identify how the Coalition’s interests are different from the customers represented by the OCC, or make a showing that OCC representation is inadequate. If the Commission does not deny the Coalition’s filing outright, Public Service, at a minimum, requests that the Commission require the Coalition to provide more information so the Commission may properly consider the request for intervention.

44. On May 12, 2021, the OCC and CEO jointly provided a late-filed response and motion addressing the Coalition’s requested intervention. The pleading claims that the Coalition is known to represent interests not identified in its four-page pleading; that the pleading does not meet the standards of Rule 1401; and that the stated interests do not differentiate the Coalition from the interests already represented in the Proceeding by OCC. Through their late filing, OCC and CEO raise concerns with the lack of transparency in the Coalition’s filing, and request that the Commission require the Coalition to provide supplemental information if it considers its intervention further.

²¹ *Id.*

²² *Id.* at ¶ 5.

²³ *Id.*

3. Standard for Permissive Intervention

45. Section 40-6-109(1), C.R.S., creates two classes of parties that may participate in Commission proceedings: those who may intervene as of right and those whom the Commission permits to intervene. *Pub. Serv. Co. of Colo. v. Trigen-Nations Energy Co.*, 982 P.2d 316, 327 (Colo. 1999). For a party to be “interested in or affected by” a proceeding, requires “a substantial personal interest in the subject matter of the proceedings [whose] intervention will not unduly broaden the issues.” *Id.*, at 327 (emphasis added).

46. Rule 4 CCR 723-1-1401(c) of the Commission’s Rules of Practice and Procedure corresponds with this standard 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.

47. 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 OCC or inconsistent with other classes of consumers represented by the OCC. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., the OCC has a statutory mandate to represent the interests of residential ratepayers. “[I]f there is a party charged by law with representing [the individual’s] interest, then a compelling showing should be required to demonstrate why this representation is not adequate.” *Feign v. Alexa Group, Ltd.*, 19 P.3d 23, 26 (Colo. 2001).

48. In addition, under § 40-2-125.5(5)(f), C.R.S., communities affected by a qualifying retail utility's CEP may move to intervene, but must be represented by an attorney. *See* Rule 1401(d).

49. Pursuant to Rule 1500, the person seeking leave to intervene by permission bears the burden of proof with respect to the relief sought.

4. Unopposed Interventions

50. Each entity seeking to intervene that does not represent residential customer, agricultural customer, or small business customer interests is unopposed, and has sufficiently demonstrated that this Proceeding may substantially affect its pecuniary or tangible interests pursuant to Rule 1401(c). Each also has demonstrated that its interests would not otherwise be adequately represented. Therefore, we grant the unopposed requests for permissive intervention.

51. Particularly given the numerous intervenors to this Proceeding, parties are reminded and encouraged to seek efficiencies through conferral where their respective positions may align such that pleadings or positions can be provided concisely, and jointly, if possible.

52. The following are parties to this Proceeding: Public Service, Staff, the OCC, CEO, Holy Cross, IREA, Local No. 111, RMELC/CBCTC, County of Pueblo, Denver, CIEA, Vote Solar, Interwest, the Conservation Coalition, CRES, Pueblo City and Water, COGA, Boulder, WRA, COSSA/SEIA, Onward, Walmart, CEC, and Climax.

5. Ms. Leslie Glustrom

53. Within her pleading, Ms. Glustrom argues she has a right to intervene, focusing on language in § 40-6-109(1), C.R.S., that a person "interested in or affected by any order that

may be made by the commission in such proceeding and who shall have become parties to the proceeding shall be entitled to be heard....”²⁴

54. As upheld by Colorado courts, the Commission has consistently rejected Ms. Glustrom’s arguments that the statute creates a “right” of intervention for Ms. Glustrom. *See, Glustrom v. Pub. Util. Comm’n*, 11CV8131 (Order Dismissing Appeal, July 11, 2012); *see also e.g.*, Decision No. C16-0663-I, issued July 13, 2016, in Proceeding No. 16A-0396E (denying Ms. Glustrom’s intervention in Public Service’s most recent ERP proceeding); Decision No. C14-1247 issued October 16, 2014 in Proceeding No. 14AL-0660E (denying Ms. Glustrom’s intervention, including that she does not have a right to intervene pursuant to statute). The Commission also has found that Ms. Glustrom fails to meet the requirements of § 40-6-109(1), C.R.S., and Rule 4 CCR 723-1-1401 for permissive intervention because she does not demonstrate: a pecuniary or tangible interest not shared by residential ratepayers in general; that her interests would not be adequately represented by the OCC; and that there is bad faith, collusion, or negligence on behalf of the OCC. *See, Id.*

55. This Commission again rejects Ms. Glustrom’s arguments regarding § 40-6-109, C.R.S., consistent with the Denver District Court order and prior Commission decisions. Ratepayers, including Ms. Glustrom, do not have a “right” to intervene based on § 40-6-109, C.R.S.

56. Nevertheless, pursuant to Rule 4 CCR 723-1-1401(c), Ms. Glustrom may request permissive intervention by indicating that this Proceeding may affect her pecuniary interests, provided that she also discusses whether the OCC can adequately represent her distinct interest. Here, as a “customer and stockholder and long-time Colorado Public Utilities Commission []

²⁴ Glustrom Intervention at p. 2. (emphasis omitted)

intervenor”²⁵ Ms. Glustrom states pecuniary and tangible interests in the Proceeding, including that ratepayers not pay for coal supply reports,²⁶ in addition to her tangible interests in our planet, nature, and the lives of her children, grandchildren, and the people of Pueblo, Colorado.²⁷

57. Ms. Glustrom claims that the OCC cannot adequately represent her interests, surmising that her pleading overall discussing ratepayer and related concerns such as discount rate analysis, in addition to her concerns regarding coal study considerations, demonstrate that OCC cannot represent her interests.

58. We deny Ms. Glustrom’s intervention.²⁸ We conclude that she fails to demonstrate a pecuniary and tangible interests not shared by other residential ratepayers and parties to this matter.

59. Ms. Glustrom does not have a pecuniary or tangible interest as an individual ratepayer separate from those that the OCC and other parties will represent in this Proceeding. The OCC is well suited to represent residential ratepayer interests. Ms. Glustrom does not overcome the presumption of adequate representation through evidence of bad faith, collusion, or negligence on behalf of OCC.

60. Public Service is correct in its response that the Commission has consistently held, “[t]he test of adequate representation is whether there is an identity of interest, rather than the discretionary litigation strategy of the representative.”²⁹ Commission Rule 1401 is similar to

²⁵ *Id.* at p. 1.

²⁶ *Id.* at p. 14.

²⁷ *Id.* at pp. 22-23.

²⁸ Chairman Eric Blank does not join the majority decision denying Ms. Glustrom’s intervention and, instead, would exercise his discretion to allow permissive intervention of Ms. Glustrom in this case.

²⁹ Public Service Response at 4 (citing Proceeding No. 16A-0396E, Decision No. C16-0663-I (issued July 15, 2016), at ¶ 39; Proceeding No. 17A-0797E, Decision No. C18-0117-I (issued Feb. 15, 2018), at ¶ 14).

Colorado Rule of Civil Procedure 24(a), which provides that, even if a party seeking intervention has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties. *See Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass'n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case's judgment. *See Denver Chapter of the Colo. Motel Ass'n v. City & County of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city). 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. The presumption of adequate representation can be overcome by evidence of bad faith, collusion, or negligence on the part of the representative. *Id.*; *Estate of Scott v. Smith*, 577 P. 2d 311, 313 (Colo. App. 1978). Consistent with past Commission decisions, Ms. Glustrom fails to overcome the high burden to show that OCC does not adequately represent her interests as a residential ratepayer.³⁰

61. Ms. Glustrom's interests as a shareholder are also represented. Public Service has fiduciary responsibilities to its shareholders and is expected to represent their interests.

62. Finally, with respect to Ms. Glustrom's claimed areas of expertise and concerns regarding the presence of a discount rate analysis and future coal costs and constraints on coal supplies, we disagree with her assertion that her participation in this Proceeding is necessary. We

³⁰ *See, e.g.*, Decision No. C16-0663-I at ¶¶ 44-53, and Decision No. C16-0812-I (denying Ms. Glustrom intervenor status in Phase I and affirming its decision on reconsideration in Public Services' most recent ERP proceeding) in Proceeding No. 16A-0396E issued September 2, 2016; Decision No. C17-0796, at ¶ 31 (denying Ms. Glustrom intervenor status after the CEP settlement was filed).

further reject her argument that no other intervenor will be able to analyze the appropriate discount rate or address how coal cost and coal supply issues will affect the costs and operation of Public Service's system.

63. As a non-party, Ms. Glustrom is welcome to present her positions and concerns through public comment. Other parties in this Proceeding, including WRA and Boulder, are well positioned to address concerns related to climate change. Additional parties, including Interwest, COSSA/SEIA, Vote Solar, and CEO advocate for the acquisition of resources that reduce the usage of fossil fuels and that protect the environment. Ms. Glustrom is not precluded from working with these or other parties in this Proceeding to address her concerns.

64. In addition, we note that Ms. Glustrom has advocated through public comment in past proceedings, including the Company's most recent ERP. Public comment may be filed at any time. We continue to encourage Ms. Glustrom and all public participants to engage in the comment process throughout this Proceeding, including in the early stages of considerations such that the Company and established parties can review public comments as they prepare testimony and responses.

6. Coalition of Ratepayers

65. In its four-page filing, the Coalition states that it is an "unincorporated association of business and non-profit entities" that are primarily small businesses.

66. The Coalition states its interest in the Proceeding is "to obtain the most economical, reliable electricity produced by a fuel mix that complies with state and federal law." Without further addressing those interests, it claims that its interest in the past ERP and related Proceeding are evidence that its interests are distinct and often not aligned with Staff, the CEO, or the OCC.

67. We agree with Public Service that the short pleading does not meet the standards of Rule 1401, including that – as an organization made up of small businesses – it fails to identify how the Coalition’s interests are different from the customers represented by the OCC, or make a showing that the OCC’s representation in this Proceeding is somehow inadequate.

68. Participation in past proceedings does not meet the requirements of Rule 1401(c) and is not sufficient grounds for intervention. The Coalition’s reliance on its interests and positions in the most recent ERP are insufficient to identify pecuniary and tangible interests in this Proceeding that are not otherwise represented. In the prior ERP, the Coalition noted that OCC and other parties had already entered stipulation and settlement agreements that the Coalition opposed.³¹ The Coalition further explained its position in relation to the proceeding at issue, which the Commission found sufficient to grant intervention.

69. Here, the Coalition relies solely on its past participation as grounds to participate fully in this ERP, and makes no effort to meaningfully differentiate its interests from OCC or any other known party. As identified in its meager statements in intervention, the Coalition fails to meet its burden as required under Rule 1500 to warrant our granting its intervention in this Proceeding. The representations in the Coalition’s filing are simply inadequate to allow it party status. Considering Public Service’s response, and given the complexities of the process already underway and numerous parties, we further determine that the supplemental, unique process to waive Commission rules and further permit additional filings from the Coalition in addition to the intervention pleading it chose to provide is not required or appropriate. The Coalition failed to support its pleading and meet its burden; the intervention is therefore denied.

³¹ Decision No. C17-0796-I, Proceeding No. 16A-0396E, issued September 27, 2017, at ¶ 30.

70. Because we find the Coalition's pleading fails on its merits, whether to accept the late-filed response and pleading jointly filed by OCC and CEO is moot.³² While we share OCC and CEO's concerns generally regarding transparency, and expect that all filers are forthcoming regarding their pleadings and interests, because our decision moots OCC and CEO's late-filing, their joint request to require supplemental clarifications or information given their collective concerns regarding the Coalition is also mooted.³³

71. Similar to Ms. Glustrom, the Coalition is invited and encouraged to participate as a non-party to this Proceeding through the filing of public comments.

E. Black Hills' Request to Participate as *Amicus Curiae*

72. In its Motion to Participate as *Amicus Curiae* filed April 28, 2021, Black Hills notes that Public Service's Application is the first of its kind to implement the requirements of HB 19-1261 and SB 19-236, and that the Commission's decision will affect Black Hills' future CEP filing. Black Hills seeks *amicus* status to present legal arguments that address statutory interpretation.

73. We grant Black Hills' Motion to Participate as *Amicus Curiae*. Under Rule 4 CCR 723-1-1200(c), an *amicus curiae* is not a party, and may present a legal argument only, as permitted by the Commission. Allowing Black Hills to participate in this way is appropriate and will assist the Commission as it considers matters of first impression in implementing the

³² Chairman Eric Blank does not join the majority decision denying the Coalition's motion outright. Although the Chair would not grant the Coalition's motion based on the pleading presented, considering OCC and CEO's filing, Chairman Blank would permit additional information into the record for further consideration of the Coalition's party status.

³³ Minutes after the Commissioners' deliberations on this matter in its May 19, 2021 Commissioners' Weekly Meeting, the Coalition filed a "motion and response" to OCC and CEO's late-filed pleading. While styled as a motion to reply, such a response to a late-filed pleading is not only improper prior to the Commission ruling on whether to accept the initiating late-filed pleading itself, but is mooted upon the underlying late-filed motion being denied as moot. Should the Coalition take issue with Commission decisions or party pleadings, it must file appropriate and timely pleadings under the Commission rules.

CEP-related statutes. Black Hills' *amicus* status is consistent with past Commission proceedings (e.g., Proceeding No. 13D-0498E) and will likely aid in overall clarity, including prior to Black Hills' anticipated CEP filing in 2022.

F. CDPHE Request to Participate as a “Neutral Verifier”

74. CDPHE requests limited participation in the Proceeding as a “neutral verifier.” CDPHE notes that HB 19-1261 and SB 19-236 direct CDPHE, after consultation with the Air Quality Control Commission, to “participate in any proceeding seeking approval of a [CEP] developed by a qualifying retail utility pursuant to [§ 40-2-125.5, C.R.S.]” It notes, however, that the process for participation and consultation is not directed by statute, but is left to the CDPHE to “describe the methods of measuring carbon dioxide emissions and [to] verify the projected carbon dioxide emission reductions as a result of the [CEP].” § 40-2-125.5(4)(b), C.R.S. CDPHE requests the Commission approve its participation status as a non-party, and permit CDPHE to submit verification reporting during Phase I and Phase II. CDPHE also offers to submit any additional CEP verification reports requested by the Commission within 14 days of the request, and to respond to any written technical questions related to the report from the Commission.

75. We find that it would be helpful to allow the parties to respond to the CDPHE's Unopposed Motion for Limited Participation.

76. The Commission will defer ruling on the status of CDPHE until the parties have had an opportunity to respond to CDPHE's Unopposed Motion for Limited Participation. Response to CDPHE's motion regarding its participation status is permitted through May 28, 2021.

G. Public Service Omnibus Motion

77. Concurrent with its Application, Public Service filed an Omnibus Motion. This Omnibus Motion contains two main areas of request: (1) a Motion for Extraordinary Protection covering eight categories of information; and (2) requests for waivers of Commission Rule 3612(a), Rule 3608(c)(III)-(IV), and Rule 3661(h)(V).

78. Public Service represents that the requested protections are consistent with highly-confidential treatment authorized by the Commission in past proceedings. Rule waivers address the timing of the Company's proposed Independent Evaluator; waivers regarding required injection capacity information that the Company claims would not convey useful information in the context of this Proceeding; and waivers related to how renewable energy standard data is presented based on its Direct Testimony presented by Mr. Alexander Trowbridge.

79. Before ruling on the merits of the Omnibus Motion, we find it appropriate to provide the established parties an opportunity to respond.

80. Response to the Company's Omnibus Motion may be provided through May 28, 2021. Parties should include whether a request made by the Company is most appropriately addressed early in this Proceeding, or if it is best to consider the request as part of a future Commission decision after further testimony and evidence is presented, including without limitation in the expected Phase I or Phase II decision.

H. Supplemental Direct Testimony

81. In its Notice of Intervention, Staff requests the Commission "strongly consider" requiring the Company submit supplemental testimony in five areas. Staff argues that requiring Public Service to provide such information sooner rather than later will benefit everyone given the complexity of the case. This is especially true, Staff asserts, because its requested

supplemental information requires the Company to conduct special studies and additional modeling, both of which usually prove difficult to obtain via discovery.

82. However, in Public Service's subsequent Notice Regarding the Intervention of Staff, the Company represents that Staff and Public Service agree that supplemental direct testimony is not necessary at this time. Public Service and Staff agree that discovery and the Phase I processes can address Staff's concerns expressed in its Notice of Intervention.

83. Despite the agreement that Public Service and Staff reached regarding supplemental testimony, at the Commissioners' Weekly Meeting on May 19, 2021, we expressed interest in discussing the potential for supplemental direct testimony from the Company. In particular, we expressed a desire to explore whether supplemental direct testimony would be appropriate on topics such as the impact of vehicle-to-grid integration; virtual power plants; modeling an extreme, widespread weather event in the summer of 2030; model solar-plus-storage as a single, co-located, quasi-dispatchable resource; the possibility of interregional transmission such as a 1,500 MW tie running to the Southwest Power Pool east of Colorado and another 1,500 MW tie running to the west of Colorado; and the impacts of a scenario in which the system peak shifts 60 to 90 minutes earlier or later in the day.

84. We will continue exploring whether such topics are appropriate for supplemental direct testimony and intend to allow Public Service to respond to our proposals prior to ordering supplemental direct. Supplemental testimony considerations, if any are required, will therefore be addressed through a separate decision.

I. Schedule Conferral and Prehearing Conference

85. The Company is on notice that it shall commence conferral regarding a proposed schedule and discovery procedures. As a necessary participant seeking non-party status, CDPHE

shall participate in this conferral regarding the proposed procedural schedule, including any necessary verification processes. In order to accommodate additional discussion on the anticipated need for further supplemental direct testimony considerations and requirements, unless revised by a future Commission decision, Public Service shall file a proposed procedural schedule and the results of the conferral by June 18, 2021. CDPHE is encouraged to participate in considerations of the established parties' proposed schedule. The schedule shall discuss considerations regarding CDPHE's proposed filings within the anticipated timeline proposed, in addition to consideration of the Company's timelines anticipated in the Colorado Power Pathway Application, Proceeding No. 21A-0096E.

86. A remote prehearing conference is scheduled for June 23, 2021. The remote prehearing conference will be held using the web-hosted video conferencing service Zoom. To minimize the potential that the video conference may be disrupted by non-participants, the link and meeting ID or access code will be provided to the parties by e-mail before the prehearing conference, and the parties will be prohibited from distributing that information to anyone not participating in the prehearing conference.

87. Information and directions on using Zoom to attend the remote prehearing conference is provided in Attachment A to this Decision. The Commission strongly encourages the parties to test their ability to use Zoom before the scheduled start time.

II. ORDER

A. It Is Ordered That:

1. The Verified Application for Approval of its 2021 Electric Resource Plan and Clean Energy Plan filed by Public Service Company of Colorado (Public Service) on March 31,

2021, was deemed complete by operation of Rule 1303(c)(III) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, for the purposes of § 40-6-109, C.R.S.

2. The Application is set for hearing before the Commission *en banc*.
3. A procedural schedule, including filing deadlines and discovery procedures, shall be established by separate decision.
4. The Motion to Intervene filed by Holy Cross Electric Association Inc. (Holy Cross) on April 1, 2021, is granted.
5. The Motion to Intervene filed by Intermountain Rural Electric Association (IREA) on April 7, 2021, is granted.
6. The Motion for Leave to Intervene filed by IBEW Local No. 111 on April 22, 2021, is granted.
7. The Joint Motion for Leave to Intervene filed by Rocky Mountain Environmental Labor Coalition (RMELC) and Colorado Building and Construction Trades Council (CBCTC) on April 27, 2021, is granted.
8. The Motion to Intervene, Entry of Appearance and Request for *en banc* Hearing filed by the County of Pueblo on April 27, 2021, is granted.
9. The Motion to Intervene filed by the City and County of Denver (Denver) on April 28, 2021, is granted.
10. The Motion to Intervene and Entry of Appearance filed by the Colorado Independent Energy Association (CIEA) on April 28, 2021, is granted.
11. The Motion to Intervene and Entry of Appearance filed by Vote Solar on April 28, 2021, is granted.

12. The Petition to Intervene filed by Interwest Energy Alliance (Interwest) on April 29, 2021, is granted.

13. The Joint Motion to Intervene filed by Sierra Club and Natural Resources Defense Council (collectively the Conservation Coalition) on April 30, 2021, is granted.

14. The Motion for Leave to Intervene filed by Colorado Renewable Energy Society (CRES) on April 30, 2021, is granted.

15. The Joint Motion to Intervene and Entry of Appearance filed by the City of Pueblo and the Board of Water Works of Pueblo, Colorado on April 30, 2021, is granted.

16. The Petition to Intervene filed by Colorado Oil & Gas Association (COGA) on April 30, 2021, is granted.

17. The Motion for Permission to Intervene filed by the City of Boulder (Boulder) on April 30, 2021, is granted.

18. The Motion to Intervene filed by Ms. Leslie Glustrom on April 30, 2021, is denied, consistent with the discussion above.

19. The Motion to Intervene, Entry of Appearance and Request for *en banc* Hearing filed by the Coalition of Ratepayers (Coalition) on April 30, 2021, is denied, consistent with the discussion above.

20. The Motion for Leave to Intervene filed by Western Resource Advocates (WRA) on May 3, 2021, is granted.

21. The Joint Motion to Intervene, Request for Hearing, and Entry of Appearance filed by Colorado Solar and Storage Association (COSSA) and Solar Energy Industries Association (SEIA) on May 3, 2021, is granted.

22. The Motion to Intervene filed by Onward Energy Management LLC (Onward Energy) on May 3, 2021, is granted.

23. The Motion for Intervention filed by Wal-Mart Stores, Inc. and Sam's West, Inc. (Walmart) on May 3, 2021, is granted.

24. The Motion to Permissively Intervene and Request for Hearing filed by Colorado Energy Consumers Group (CEC) on May 3, 2021, is granted.

25. The Motion to Intervene filed by Climax Molybdenum Company (Climax) on May 3, 2021, is granted.

26. The Joint Late Filed Motion to Respond and Response to Coalition of Ratepayers' Intervention and Request for Shortened Response Time filed by the Colorado Office of Consumer Counsel (OCC) and the Colorado Energy Office (CEO) on May 12, 2021, is denied as moot.

27. Consistent with the discussion above, the following are parties to this Proceeding: Public Service, Staff of the Public Utilities Commission (Staff), the OCC, the CEO, Holy Cross, IREA, IBEW Local No. 111, RMELC, CBCTC, County of Pueblo, Denver, CIEA, Vote Solar, Interwest, the Conservation Coalition, CRES, City of Pueblo and the Board of Water Works of Pueblo, COGA, Boulder, WRA, COSSA, SEIA, Onward Energy, Walmart, CEC, and Climax.

28. The Motion to Participate as *Amicus Curiae* filed by Black Hills Colorado Electric, LLC on April 28, 2021, is granted.

29. Responses to the Unopposed Motion for Limited Participation filed on April 29, 2021 by the Colorado Department of Public Health and Environment (CDPHE) may be filed up to and including May 28, 2021.

30. Responses to the Omnibus Motion for Extraordinary Protection of Highly Confidential Information, and for Partial Waiver of Rules 3612(a) and 3611(h)(V), and waiver of Rule 3608(c)(III) filed on March 31, 2021 by Public Service may be provided up to and including May 28, 2021, consistent with the discussion above.

31. Public Service shall confer with the parties, including the CDPHE, to develop a proposed procedural schedule, including a date for an *en banc* hearing. Public Service shall file the proposed procedural schedule, including discovery procedures, no later than June 18, 2021.

32. A remote prehearing conference is scheduled as follows:

DATE: June 23, 2021

TIME: 1:00 p.m.

PLACE: By video conference using Zoom at a link to be provided to parties by email.

33. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 19, 2021.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners