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

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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	**)))))**	**PROCEEDING NO. 21A-0141E**

PUBLIC SERVICE COMPANY OF COLORADO'S PUBLIC RESPONSE TO DECISION NO. C23-0522-I

Public Service Company of Colorado ("Public Service" or the "Company") files this Response as directed by Decision No. C23-0522-I (the "Decision"). The Decision directs the Company, after conferral with Trial Staff ("Staff") of the Colorado Public Utilities Commission ("Commission"), to provide "an update regarding the deferred tax asset ("DTA") issues, including the results of the conferral process, the DTA forecast, if available, and the planned treatment of DTA in the Phase II modeling."[1]

The Company has worked with Staff both in this proceeding and in Proceeding No. 22AL-0555E to address the impacts of the production tax credit ("PTC") transferability provisions of the Inflation Reduction Act of 2022 ("IRA"). The tariff approved in Proceeding No. 22AL-0555E facilitates the transfer of PTCs from existing Company-owned and PTC-eligible wind projects to the benefit of customers and underpins a modeling approach to account for PTC transferability in Phase II of this proceeding. The IRA transferability provisions will mitigate and eventually eliminate the DTA associated with unused PTCs from the Company's currently owned wind projects and will prevent

[1] Decision No. C22-0522-I, at ¶ 2.

any new PTC DTA from being created with potential new Company-owned projects via transferability; accordingly, the modeling approach for Phase II assumes the transfer of all PTCs and imputes the transfer cost of all PTCs, on a project-specific basis, to relevant bids. This cost is therefore embedded in the evaluation of bids and the consideration of whether to include such bids in presented portfolios.

I. INTRODUCTION AND BACKGROUND

PTCs are an inflation-adjusted per-kilowatt-hour ("kWh") tax credit, which accrues to owners (taxpayers) of eligible renewable generation resources for electricity generated and sold by the taxpayer during the taxable year. The PTC is available for 10 years after the facility is placed in service. The investment tax credit ("ITC") is a credit for expenses invested in eligible renewable energy projects. The IRA extends the ITC as a 30 percent credit for qualified expenditures.

In general, the IRA provides a 10-year extension of PTCs and ITCs at full value[2] and expands the list of qualifying property for both credits. These tax credits are generally available to project owners after qualifying projects are placed in service. The IRA also includes new opportunities to enhance the level of credit if certain domestic content requirements are met and/or if the project is located in an "energy community," such as near a former coal plant. In order to claim the full value of the PTCs or ITCs, companies must now meet certain prevailing wage and apprenticeship requirements during the construction, operation, and maintenance of such projects. As a result of the IRA, PTC

[2] The 10-year extension of PTCs and ITCs under the IRA is no longer subject to the phasedowns and phase-outs of the credit rate that were required under prior law. These phasedowns and phase-outs reduced the value of the credits, depending on when the project began construction, but were not applicable to Public Service's Rush Creek and Cheyenne Ridge Wind Projects.

eligible generation includes, among others, wind, solar, nuclear, and clean hydrogen.[3] ITCs are expanded to include stand-alone energy storage with an ability to opt out of normalization requirements. In addition, taxpayers can capture ITCs for, among other technologies, microgrid controllers, fuel cells, geothermal (heat pump and direct use), combined heat and power, and microturbines.

A. Tax Credit Transferability Under the IRA

The IRA allows for the transfer of PTCs and ITCs ("renewable tax credits") to other taxpayers. Prior to the IRA, there was no ability to transfer renewable tax credits and therefore this type of approach was not considered during the evaluation of prior Company-owned and PTC-eligible projects. The tax credit transferability provisions of the IRA represent a substantial policy shift in tax credit treatment that promises to lower customer costs and encourage further investments in renewable energy. Beginning in 2023, the IRA allows owners of qualified projects to make annual elections for the year credits are generated to sell certain tax credits, such as PTCs and ITCs, to unrelated taxpayers for cash. Eligible credits generally include clean energy PTCs and ITCs. Once the election is made and the tax credits are transferred, the election is irrevocable and the credits may not be further transferred. Transferees can then utilize these PTCs to offset their federal income tax liability. The ability to transfer tax credits significantly reduces tax inefficiencies, leading to lower costs of energy for our customers.

Because of the new transferability of PTCs, Public Service will be able to monetize its PTCs soon after they are generated rather than deferring them for future use, which is what creates a DTA for unused PTCs. This benefits customers because the estimated

[3] *See* 26 U.S.C. §§ 45(c), 45U, & 45V.

costs of transferring PTCs are significantly lower than the carrying cost on any PTC DTA. The Company has already implemented a revision to the Electric Commodity Adjustment ("ECA") Tariff in Proceeding No. 22AL-0555E to allow for PTC transfers associated with the Rush Creek Wind Project ("RCWP") and Cheyenne Ridge Wind Project ("CRWP"), following extensive collaboration with Staff and the Colorado Office of Utility Consumer Advocate ("UCA"). Moreover, it is important to note that utility-owned wind and solar projects can benefit from tax credit transferability in both the current and future Phase II competitive solicitations , which ultimately benefits customers through lower levelized cost of energy of Company-owned projects. .

B. June 2023 Guidance Regarding Tax Credit Transferability

On June 14, 2023, the U.S. Department of the Treasury and the Internal Revenue Service ("IRS") released guidance[4] relating to new Internal Revenue Code Section 6418—the section of the IRA which provides taxpayers with the ability to monetize certain tax credits. The Company has evaluated this guidance to determine its impacts on any potential future DTA forecasting, i.e., to see if it imposed limitations that would preclude the Company from transferring PTCs to mitigate and eliminate the DTA for unused PTCs as planned. The transferability guidance overall was largely as expected and provides guidance sufficient for the market to begin transacting. Some of the key clarifications in the proposed regulations include the following:

- Transferees must pay for the credit in cash (i.e., cash, check, cashier's check, money order, wire transfer, ACH transfer, or other bank transfer of funds that are immediately available).

[4] *See* IRS releases guidance on elective payments and transfers of certain credits under the Inflation Reduction Act, IR-2023-116, June 14, 2023, *available at* https://www.irs.gov/newsroom/irs-releases-guidance-on-elective-payments-and-transfers-of-certain-credits-under-the-inflation-reduction-act; *see also* Section 6418 Transfer of Certain Credits, 88 FR 40496, *available at* https://www.federalregister.gov/documents/2023/06/21/2023-12799/section-6418-transfer-of-certain-credits.

- The credit can be transferred to multiple transferees.

- Taxpayers earning the credit may transfer only a portion of the credit and retain the remainder.

- The credit amount cannot be separated from any “bonus” credit portions (i.e. taxpayers cannot transfer a portion of an eligible credit related solely to a bonus credit amount).[5] If an entire credit is transferred, the entire bonus credit must be included in the transfer. If a portion of the credit is transferred, the same proportional amount of any bonus credit must be transferred.

- Once a transfer is made, it is irrevocable and cannot be transferred back to the transferor and cannot be transferred to another party. The regulations clarify that brokers can help foster a relationship between a transferor and a transferee but may not purchase the credit and then transfer it to a subsequent transferee.

There are several requirements for transferring a credit, including:

- Temporary regulations for an electronic pre-filing registration requirement process (an online portal) that is designed to prevent improper payments to fraudulent applicants and to ensure that taxpayers who qualify for the credit monetization mechanisms can access the benefits. Without a prefiling registration number, any attempt to transfer an eligible credit will be denied.[6]

- Pre-filing registration through an IRS portal, which should be available by late 2023;

- Filing a form 3800, General Business Credit (or a successor form); and

- Including a “Transfer Election Statement.”

Additionally, the IRS noted that they will set up the pre-filing registration later this year, including a requirement for taxpayers to list all applicable credits the entity intends to transfer, as well as other information. The IRS intends to review that information and

[5] The Energy Community and Domestic Content bonus credits are available for projects meeting certain qualifications.

[6] On June 14, 2023, the IRS and Treasury issued proposed Treasury regulations (the “Proposed Regulations”) that provide guidance on the rules for selling certain tax credits. Taxpayers are permitted to rely on the Proposed Regulations until final regulations are published. In a separate regulatory package issued on the same date, the IRS and Treasury released a Temporary regulation (the “Temporary Regulation”) that implements a registration system with the IRS that parties will need to satisfy before any valid sale of credits; the Temporary Regulations are effective as of June 21, 2023.

issue a separate registration number to each credit property for which the taxpayer provided sufficient information.

II. COMPANY ACTIONS TO EFFECTUATE TRANSFERABILITY

The PTC transfer approach implemented in Proceeding No. 22AL-0555E is a key consideration as it is interrelated with the Company's PTC DTA forecast and the modeling of PTC transfers that will occur in the Phase II process. In that proceeding, the Company revised the ECA Tariff in a targeted but important manner to facilitate the ability to transfer PTCs to other taxpayers, which will benefit customers and the Company.

The ECA Tariff now includes a sentence addressing PTC pass-throughs for both the RCWP and CRWP, which accounts for the transaction costs associated with transferring PTCs. These transaction costs facilitate tax credit transfers that mitigate and then ultimately eliminate the DTA for unused PTCs thus reducing costs overall. This facilitates more cost-effective PTC-eligible energy in the best interests of customers and State of Colorado energy policy. Indeed, it will enhance competition by reducing tax inefficiencies, which benefits customers in terms of lower clean energy costs.

In addition to adding the ECA Tariff provision to allow for transfers of PTCs from the RCWP and CRWP, the Company, Staff, and UCA worked together to develop a PTC Performance Incentive Mechanism ("PIM") in the ECA Tariff for RCWP and CRWP transfers.[7] The Company's share of the PTC PIM that was awarded from the prior year would be included in the Quarterly ECA Revenue Requirement. The PTC PIM provides a financial incentive for the Company to minimize transaction costs and share any savings from the transfers of PTCs from the RCWP and CRWP between customers and the

[7] *See generally* Advice No. 1912 – Electric Second Amended, Proceeding No. 22AL-0555E.

Company. The total savings for a particular calendar year resulting from the Company's transfer of PTCs is defined as the annual DTA carrying cost cap from Proceeding No. 18A-0905E less the actual DTA carrying costs and PTC transaction costs. The annual DTA carrying cost cap is the benchmark for establishing savings because this is what customers would likely pay in the absence of PTC transferability made available by the IRA, and the applicable DTA level in a given year allows the Company to measure the savings that transferability created in that year. All savings up to 50% of the annual DTA carrying cost cap amount flow 100% to customers, ensuring that customers receive the majority of the savings opportunities before the Company receives any sharing. Savings in excess of 50% of the annual DTA carrying cost cap shall be shared 60% to customers and 40% to the Company. By using these sharing percentages, it is expected that customers will receive approximately 90% of the sharing over the life of the PTC PIM, which is set to expire on January 1, 2027.

For transparency, the Company also committed to various reporting regarding its PTC transfers in Proceeding No. 22AL-0555E. In the quarterly ECA advice letter filings, the Company will include the number of PTCs earned, the number of PTCs transferred within the immediate past quarter and year to date, total MWh generated at each facility, and the average transaction cost of the transfers. The quarterly filings will also include the beginning and ending balance of PTCs for each period reported and a forecast of the projected PTCs that will be transferred, any DTA carrying costs, and the PTC transfer costs expected in the forthcoming quarter. In the ECA annual prudence review filing, the Company will submit a comprehensive list of all transfers for that year and the transaction cost of each transfer. Additionally, the Company will provide support for any PTC DTA

carrying costs that occurred within the year. In the annual Cheyenne Ridge Customer Protection Mechanism ("CPM") report, the Company will include the full cost of transfers, any PTC DTA carrying costs, and the Company's share of the PTC PIM in the evaluation of the CPM, which is filed in Proceeding No. 18A-0905E.

While the outcome in Proceeding No. 22AL-0555E only applies to the RCWP and CRWP PTCs, it represents an important first step in facilitating the transfer and monetization of PTCs, in turn mitigating and eliminating the DTA associated with unused PTCs. Similar to enabling elimination of the existing DTA from previously approved Company-owned wind projects, the IRA's PTC transferability provisions enable the Company to add new Company-owned renewable projects without adding to or creating new PTC DTAs, since the Company can transfer and immediately monetize the PTCs to the benefit of customers. This transfer and monetization make Company-owned projects more cost-effective by avoiding PTC DTA impacts, which can enhance competition among bids in the Phase II competitive solicitation and future competitive solicitations.

The Company is in active negotiations with potential buyers and participating in this nascent market in order to begin effectuating the plans laid out above. Based on the level of interest the Company is observing, it expects to be able to transfer all eligible credits from RCWP and CRWP as well as all future tax credits from Company owned renewables.

Finally, the transfer and monetization of PTCs avoids a DTA for unused PTCs altogether, while the modeling can capture the expected impacts of the transfer of all PTCs from any Company-owned, PTC-eligible projects, as explained in more detail below.

III. DTA ANALYTICS

The Commission directed the Company, after conferral with Staff, to provide a "DTA forecast." Because of the substantial tax policy change in the IRA to allow for the transfer of PTCs, the Company does not forecast having a DTA for unused PTCs over the longer term. Nevertheless, the Company has prepared and conferred with Staff on a set of analytics that are reflected in Highly Confidential Attachment A to this Response.[8] Highly Confidential Attachment A is based on generic Company-owned resource additions from Phase I and contemplates two different scenarios.

The first scenario assumes no PTC transferability and shows the projected DTA. The second scenario reflects the passage of the IRA and shows both the elimination of the DTA and the projects impacts of PTC transfer costs based on generic resource additions. The first scenario does not correspond with the existing tax policy landscape as it does not account for tax credit transferability, which the IRA explicitly authorizes. The comparison of the scenarios, however, shows the benefits to customers from the transfer of all PTCs by comparing the impacts of the first scenario with the second scenario.

The purpose of this forecast is not to show a "DTA forecast" that would be used in the Phase II bid evaluation. Rather, it is to illustrate the benefits to customers from the transfer of all PTCs, which leads to the Company's modeling approach for the Phase II bid evaluation.

[8] Highly Confidential Attachment A is executable in part with live formulas that can be shown; however, it is meant to be educational about interactions as opposed to structured for testing different scenarios.

IV. <u>MODELING OF PTC TRANSFERS IN PHASE II</u>

The Company will assume the transfer of all PTCs (and ITCs) at an expected transfer cost in the modeling of Company-owned, eligible resources in Phase II. This modeling approach ensures that the transfer cost of all PTCs (and ITCs as applicable) is embedded in the revenue requirement of Company-owned projects for purposes of bid evaluation and portfolio development, which ensures that these costs are accounted for on a project-by-project basis. Simply put, the net present value of any resource portfolio will include the transfer costs for all Company-owned, PTC/ITC-eligible resources. The assumed transfer cost will be ██, which is the Company's estimated average transfer cost for PTCs based on its work in the market to find buyers for its PTCs and discussions with others in the industry.[9]

Finally, the Commission raised the question of whether PTC DTA impacts could be evaluated on a "project-specific basis."[10] The modeling approach outlined above accomplishes this objective by assuming and embedding the transfer costs for all PTCs/ITCs to individual projects *ahead of* computer-based modeling and portfolio development. A DTA for unused PTCs, on the other hand, cannot be modeled on a project-specific basis as previously discussed by the Company in this proceeding. A projected DTA for unused PTCs is impacted by a number of non-project specific factors, such as overall profitability, accelerated tax depreciation, the order in which PTCs are utilized, and the level of the existing DTA for unused PTCs from prior projects (e.g., the CRWP), among others. For those reasons, the Company has previously modeled the

[9] The estimated transfer cost is "bid information" and therefore is highly confidential, consistent with the protective order issued in this proceeding through Decision No. C21-0343-I.
[10] *See* Decision No. C22-0459, at ¶ 305.

DTA for unused PTCs on a *portfolio* basis as opposed to a project-specific basis. By assuming the transfer of all PTCs, the PTC transfer cost can be projected and assigned to projects directly. The PTC transfer cost is then incorporated in bid evaluation and portfolio development as opposed to a post-portfolio development calculation. To be sure, the related benefit of this approach is that there is no forecasted DTA for unused PTCs given the transfer of all RCWP and CRWP PTCs under the ECA Tariff revision in Proceeding No. 22AL-0555E.

The Company and Staff have conferred on and agreed to this modeling of transfers in the Phase II process.

V. CONCLUSION

The tax credit transferability provisions of the IRA, coupled with broader tax reform in the legislation, will enhance competition by allowing for cost-effective utility-owned renewable projects, which ultimately provides significant benefit to our customers in terms of lower clean energy costs. While Phase II portfolio development is in progress, the modeling approach outlined here ensures transparent consideration and evaluation of transfer impacts, while eliminating the PTC DTA for unused PTCs going forward.

Dated this 16th day of August 2023.

Respectfully submitted,

By: */s/ Christopher Irby*
Christopher Irby, #35778
Assistant General Counsel
Xcel Energy Services, Inc.
1800 Larimer Street, Suite 1100
Denver, Colorado 80202
Telephone: (303) 294-2504 (Irby)
Fax: (303) 294-2988
Email: christopher.m.irby@xcelenergy.com

and

Matthew S. Larson, #41305
Wilkinson Barker Knauer, LLP
2138 W. 32nd Ave, Suite 300
Denver, Colorado 80211
Telephone: (303) 626-2328
Fax: (303) 568-6663
Email: mlarson@wbklaw.com

ATTORNEYS FOR PUBLIC SERVICE COMPANY OF COLORADO