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

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IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, RELATING TO ELECTRIC RESOURCE PLANNING, THE RENEWABLE ENERGY STANDARD, NET METERING, COMMUNITY SOLAR GARDENS, QUALIFYING FACILITIES, AND INTERCONNECTION PROCEDURES AND STANDARDS	**)**	**PROCEEDING NO. 19R-0096E**

PUBLIC SERVICE FINAL COMMENTS TO DECISION NO. C20-0661-I

Public Service Company of Colorado ("Public Service" or the "Company") submits these responsive comments for the Colorado Public Utilities Commission's ("Commission") consideration pursuant to Decision No. C20-0661-I. The Company has also filed joint final comments and an updated transmission proposal along with Black Hills Energy ("BHE"), Colorado Energy Consumers ("CEC"), the Colorado Energy Office ("CEO"), the Colorado Independent Energy Association ("CIEA"), the Colorado Solar and Storage Association/Solar Energy Industries Association ("COSSA/SEIA"), Interwest Energy Alliance ("Interwest"), and Western Resource Advocates ("WRA"). The sole purpose of these final comments is to briefly address several comments related to other issues not included within the updated joint transmission proposal in the joint comments. Accordingly, below the Company responds to discrete remaining issues in this proceeding.

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I. CURRENT-YEAR REC RETIREMENTS UNDER § 40-2-125.5(3)(A)(III), C.R.S.

A. Principles of statutory interpretation

Well-established principles of statutory construction must guide the Commission's implementation of the current-year Renewable Energy Credit ("REC") retirement requirement set forth in § 40-2-125.5(3)(a)(III), C.R.S. The plain meaning of a statute, if its meaning is clear and absurdity does not result, is to be given effect and "[t]he entire statute is to be effective."[1] Further, the Commission must interpret different statutory provisions in a manner that avoids ambiguity or contradiction,[2] and statutes on the same subject or matter "should be reconciled if possible."[3] Finally, more specific statutory provisions control over more general provisions.[4] Only where a statute is ambiguous does one rely on other factors such as the circumstances surrounding the enactment of the statute or the legislative history, among other things.[5]

When interpreting a statute, the intent of the General Assembly must be given effect, and there is a presumption that the General Assembly intended a just and reasonable result.[6] Indeed, as repeatedly expressed by the Colorado Supreme Court, ascertaining and giving effect to the legislative intent whenever possible—particularly in

[1] *People v. Nara*, 964 P.2d 578, 580 (Colo. App. 1998); § 2-4-201(1)(b), C.R.S.
[2] *See, e.g., Anderson v. Longmont Toyota, Inc.*, 102 P.3d 323 (Colo. 2004); *Colo. Min. Ass'n v. Bd. of Cnty. Comm'rs of Summit Cnty.*, 199 P.3d 718, 733 (Colo. 2009); *In re Marriage of Ikeler*, 161 P.3d 663, 667 (Colo. 2007).
[3] *Lininger v. City of Sheridan*, 648 P.2d 1097, 1099 (Colo. App. 1982) (citing *People v. Cornelison*, 192 Colo. 337 (1977)).
[4] *See, e.g., Colo. Min. Ass'n*, 199 P.3d at 733; *Leaffer v. Zarlengo*, 44 P.3d 1072, 1079 (Colo. 2002); *City and Cnty. of Denver v. Board of Assessment Appeals of State of Colo.*, 947 P.2d 1373, 1378 (Colo. 1997) (en banc).
[5] § 2-4-203(1)(a)-(g), C.R.S.
[6] § 2-4-201(1)(c), C.R.S.; *Avicomm, Inc. v. Colo. Pub. Utils. Comm'n*, 955 P.2d 1023, 1031 (Colo. 1998); *Schubert v. People*, 698 P.2d 788, 794 (Colo. 1985).

the case of possible textual ambiguity—is a "cardinal rule" of statutory construction.[7] Statutory interpretation cannot defeat the legislative intent, and the Colorado Supreme Court holds that "[w]e do not add words to the statute or subtract words from it."[8] Moreover, "in ascertaining the intent of a legislative body, and the meaning of its enactments, [courts are required] to give effect to every word, phrase, clause, sentence and section, if it can be done, and we are not to presume that the legislative body used the language idly and with no intent that meaning should be given to its language."[9] These foundational principles of statutory interpretation guide the Commission's inquiry where, as here, the legislative intent is clear based on a plain reading of the statute as a whole.

B. Public Service's construction of § 40-2-125.5(3)(a)(III), C.R.S. gives effect to the full statute

The legislative intent of § 40-2-125.5(3)(a)(III), C.R.S. is clear, and the Company's interpretation of the statutory provision fully aligns with that intent. This subsection states that a "qualifying retail utility shall retire renewable energy credits established under section 40-2-124(1)(d), in the year generated, by any eligible resources *used to comply with the requirements of this section*" (emphasis added). Subsection 40-2-125.5(3)(a)(I), C.R.S., just prior to subsection 3(a)(III), provides: "By 2030, the qualifying retail utility shall reduce the carbon dioxide emissions associated with electricity sales to the qualifying retail utility's electricity customers by eighty percent from 2005 levels." While § 40-2-

[7] *See, e.g.*, *People v. Stevens*, 183 Colo. 399, 408 (1973); *People v. Sneed*, 183 Colo. 96, 99 (1973); *Cross v. People*, 122 Colo. 469, 472 (1950); *see also People v. Lee*, 180 Colo. 376, 381 (1973) ("The statute lacks clarity, but the legislative intent behind the statute is clear …. We will not construe a statute in such a way as to defeat the legislative intent.").
[8] *Turbyne v. People*, 151 P.3d 563, 567 (Colo. 2007).
[9] *Blue River Defense Comm. v. Silverthorne*, 516 P.2d 452, 454 (Colo. App. 1973) (quoting *City & Cnty. of Denver v. Taylor*, 88 Colo. 89 (Colo. 1930)).

125.5(4)(a), C.R.S. requires a qualifying retail utility to file a Clean Energy Plan "that will achieve the clean energy target set forth in subsection (3)(a)(I) of this section" as part of its first Electric Resource Plan filing on or after January 1, 2020, § 40-2-125.5, C.R.S. as a whole—the very "section" in question—specifically *does not* impose any requirements concerning compliance with clean energy targets prior to 2030.

Any eligible energy resources cannot be "used to comply with the requirements of this section" before 2030, because there would not yet be any such requirements with which to comply. It is therefore facially impossible for the current-year retirement requirement established by § 40-2-125.5(3)(a)(III), C.R.S. to apply to RECs generated by eligible energy resources prior to 2030. When considering § 40-2-125.5(3)(a)(III), C.R.S. within the entire context of § 40-2-125.5, C.R.S., the Company's interpretation—that RECs generated by eligible energy resources used to comply with the clean energy targets set forth in § 40-2-125.5(3)(a)(I)-(II) must be retired in the same year they are generated, *beginning in 2030*—fully implements the statute's plain language without creating new compliance requirements, earlier interim clean energy targets that the statute does not provide for, or otherwise adding to the language of the statute.

C. WRA's construction of § 40-2-125.5(3)(a)(III), C.R.S. does not give effect to the full statute

In its Response Comments, WRA argues § 40-2-125.5(3)(a)(III), C.R.S. requires that, "upon approval of a Clean Energy Plan, any renewable resource that will assist the utility in achieving its 80% emission reduction by 2030 must begin retiring RECs in the year those RECs are generated."[10] This interpretation is contrary to the clear intent of

[10] Comments of Western Resource Advocates in Response to Interim Decision No. C20-0061-I, at 11 (filed Sept. 30, 2020).

the General Assembly to not impose any clean energy target compliance requirement on qualifying retail utilities prior to 2030. Taken to its extreme, such an interpretation of the statutory language would even result in absurdity by requiring that the Company immediately begin retiring RECs generated by applicable eligible energy resources upon the filing of its Clean Energy Plan, given the Clean Energy Plan filing itself is a "requirement" of § 40-2-125.5, C.R.S. While the Clean Energy Plan "must set forth a plan of actions and investments … *projected to achieve* compliance with the clean energy targets,"[11] none of these resources are "*used to* comply with" the clean energy targets prior to reaching the first clean energy target year of 2030. The Commission cannot and should not assume the General Assembly used these disparate wordings idly or unintentionally in crafting the language of the statute. WRA's interpretation of § 40-2-125.5(3)(a)(III), C.R.S. runs contrary to the intended purpose of the statute as a whole, infers additional compliance requirements clearly not intended by the General Assembly based on the plain language of the statute, and renders other language surrounding this subsection superfluous at best—and contradictory at worst.

D. The Commission should adopt Public Service's interpretation of § 40-2-125.5(3)(a)(III), C.R.S.

The Company's construction of § 40-2-125.5(3)(a)(III), C.R.S. aligns with long-standing principles of statutory interpretation and results in the most cohesive implementation of the full body of statutory language enacted by Senate Bill 19-236. In contrast, WRA's proposed rule results in contradictions within the broader statute, ignores textual distinctions deliberately put in place by the General Assembly, and is inconsistent with the clear legislative intent of the bill. To the extent the Commission deems this

[11] § 40-2-125.5(4)(a)(II), C.R.S. (emphasis added).

rulemaking the appropriate proceeding to promulgate a rule clarifying § 40-2-125.5(3)(a)(III), C.R.S. as requested by WRA—and as articulated by Company counsel at hearing, the Company continues to believe the forthcoming Renewable Energy Standard rulemaking is the most appropriate proceeding in which to evaluate the full implications of WRA's flawed interpretation—the Commission should reject WRA's proposed clarification. If this issue of statutory interpretation is adjudicated here, the Company requests that the Commission adopt Public Service's construction of the statute, consistent with the principles of statutory interpretation set forth in Colorado law and by the Colorado Supreme Court.

II. STRANDED COST ISSUES

The Company, together with BHE, CEC, CEO, CIEA, COSSA/SEIA, Interwest, and WRA, has filed an updated joint transmission proposal along with consensus proposed rule changes to implement the proposal. One of the set of rule changes relates to Rule 3615(e)(II), and the Company continues to support the addition of language addressing stranded costs in addition to the rule changes included as part of the updated joint transmission proposal.

In Paragraph 80 of Decision No. C20-0207-I, the Commission provided as follows: "Before adopting final provisions in Rule 3604 addressing early retirements and potential buy-outs of PPAs, we require additional information and comment from the participants on: … (3) whether additional rule provisions or Commission determinations are necessary to address stakeholder concerns about stranded utility costs and breached contracts. We encourage the interested rulemaking participants to propose rule changes consistent with their positions on these three questions." Accordingly, the Company believes it is important that Rule 3615(e)(III) address stranded costs in addition to follow-on Certificate of Public Convenience and Necessity ("CPCN") proceedings. To this point, and reinforcing a concept advanced in prior comments, the notion that stranded costs are recoverable is an important regulatory principle recognized in numerous past Public Service proceedings, as shown in the table below.

Generating Unit	Proceeding	Basis for Early Retirement	Recovery Granted
Arapahoe 1 and 2	98A-511E	1998 Air Quality Improvement Rider	Yes
Cameo 1 and 2	09AL-299E	2007 ERP	Yes
Arapahoe 3 and 4	10M-245E	2007 ERP/CACJA	Yes
Cherokee 1, 2, and 3	10M-245E	CACJA	Yes
Valmont 5	10M-245E	CACJA	Yes
Craig 1	16A-0231E	Agreement to Retire Early Filed in 2016 Depreciation Study	Yes
Comanche 1 and 2	16A-0396E/17A-0797E	Colorado Energy Plan	Yes

This principle will remain relevant during Electric Resource Plans ("ERPs") going forward given the carbon dioxide and greenhouse gas emission reduction constraints that the Company must account for in resource planning. Stranded costs may arise in several ways, but the most likely drivers for such costs in the resource planning context are: (1) early or accelerated retirements of existing generation units, investments of which have been previously deemed prudent by the Commission; or (2) cost associated with the early termination or buyout of existing power purchase agreements ("PPAs"). In comments and at hearing following Decision No. C20-0207-I in this proceeding, the Company developed an approach to modify Rule 3615(e)(III) to address concerns from Sierra Club and address the issues raised by the Commission in Paragraph 80 of Decision No. C20-0207-I.[12] With the changes to Rule 3615(e)(III) now proposed through the

[12] *See* Final Comments of Public Service Company of Colorado Regarding Comments Filed in Response to Decision No. C20-0207-I and the April 23, 2020 Public Comment Hearing, at 9-10 ("At hearing, there

updated transmission proposal, the entirety of the rule—featuring Public Service stranded cost language as updated to address Sierra Club concerns (red) and updated joint transmission proposal language (green)—is provided below:

> (III) The Phase I and Phase II decisions create a presumption that utility actions consistent with those decisions are prudent and stranded costs resulting from the Commission approved resource plan for previously approved investments or expenditures are recoverable. The Phase II decision also creates a presumption of need for the transmission projects determined by the Commission to be necessary to implement the approved resource plan.
>
> (A) In a proceeding concerning the utility's request to recover the investments or expenses associated with implementing a Commission approved resource plan ~~new resources~~.
>
> (i) The utility must present prima facie evidence that its actions were consistent with Commission decisions specifically approving or modifying components of the electric resource plan.
>
> (ii) To support a Commission decision to disallow investments or expenses ~~associated with new resources~~ on the grounds that the utility's actions were not consistent with a Commission approved electric resource plan, an intervenor must present evidence to overcome the utility's prima facie evidence that its actions were consistent with Commission decisions approving or modifying components of the plan. Alternatively, an intervenor may present evidence that, due to changed circumstances timely known to the utility or that should have been known to a prudent person, the utility's actions were not proper.
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> (B) In a proceeding concerning the utility's request for a CPCN to meet customer need specifically approved by the Commission in its decision on the final cost-effective resource plan, the Commission shall take administrative notice of its decision on the plan. Any party challenging the Commission's decision regarding need for additional resources has the burden of proving that, due to a change in circumstances, the Commission's decision on need is no longer valid.
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> (C) In a proceeding concerning the utility's request for a CPCN for transmission projects determined by the Commission in its Phase II decision to be necessary to implement the approved resource plan, the Commission shall take administrative notice of its decision on the plan. Any party challenging the Commission's decision regarding need for additional resources has the burden of proving that, due to a change in circumstances, the Commission's decision on need is no longer valid. In the CPCN proceeding, the utility shall present robust testimony and evidence supporting CPCN-quality cost estimates. The Commission's grant of a CPCN provides a rebuttable presumption of prudence for the utility to carry into a subsequent rate proceeding for the costs incurred consistent with the grant of the CPCN.

was discussion between Company counsel and Sierra Club counsel regarding the potential for the Company's proposed redline to Rule 3615(e)(III) to be used to recover costs not previously approved by the Commission. This was not the intention of the Company's proposed redline change to the rule. Public Service understands this concern and, while costs not previously approved could be stranded and recoverable [as] the result of an approved resource plan, the Company further believes it is appropriate to limit the presumption that would arise under the proposed Rule 3615(e)(III) to address Sierra Club's concern ….")

> (D) In a proceeding concerning the recovery of any stranded costs resulting from the final cost-effective resource plan, the Commission shall take administrative notice of its decision on the plan. Any party challenging the recovery of stranded costs resulting from the plan bears the burden of proving that recovery should not be allowed due to a change in circumstances.

Public Service believes this version of the rule best sets forth the full scope and import of a Phase II decision, with generation, transmission, and stranded costs and their respective treatment in follow-on proceedings fully addressed by this important rule. Colorado has a best-in-class ERP process, and these further refinements—reflecting the enhanced coordination between transmission and resource planning *and* the potential for stranded costs to arise as a result of resource planning to emissions reduction targets that will advance the State of Colorado towards it energy policy goals—represent an appropriate modification for the Commission to adopt in its final ERP Rules.

III. ALTERNATIVE METHOD OF RESOURCE ACQUISITIONS

In comments filed on October 9, 2020, OCC proposed two specific changes to ERP Rules as a result of the repeal of § 40-2-124(1)(f)(I), C.R.S. in Senate Bill 19-236: (1) the deletion of Rule 3660(h); and (2) the removal of proposed Rule 3614(c)(II) and modification to proposed Rule 3614(c)(III). The Company agrees with the first proposed change as § 40-2-124(1)(f)(I), C.R.S. was the enabling statute for Rule 3660(h); indeed, § 40-2-124(1)(f)(I), C.R.S. and Rule 3660(h) nearly mirror one another. But with its second change, OCC strikes a preexisting ERP concept and rule that is not grounded in § 40-2-124(1)(f)(I), C.R.S. The alternative method of resource acquisition concept dates back to the summer of 2002, when the Commission adopted new ERP Rules (called IRP Rules at that time) to implement this provision.[13] Section 40-2-124(1)(f)(I), C.R.S., on the other hand, was passed by the General Assembly as part of House Bill 07-1291 in the 2007 legislative session and expressly addressed "eligible energy resources" acquired "after March 27, 2007," the date of enactment of House Bill 07-1291.

Alternative methods of resource acquisitions are not and have not been limited to "eligible energy resources"—utilities may use this procedural pathway for any type of resource if the requirements of the ERP Rules are satisfied by the utility through the ERP process. Therefore, the acquisition concept contemplated by § 40-2-124(1)(f)(I), C.R.S. and implementing Rule 3660(h) represents a different concept than the broader and longer-lived concept of an "alternative method of resource acquisition," which dates back to the Commission's update of the ERP/IRP in the early 2000s following an investigation

[13] *See generally* Decision No. C02-793; Proceeding No. 02R-137E.

conducted in Proceeding No. 01M-250E.[14] While eligible energy resource acquisitions comprise a subset of the resources that could be acquired under an alternative method of resource acquisition, the alternative method of resource acquisition approach has been utilized in the past to acquire supply-side resources of various generation types and demand-side resources. The Company noted "the apparent inconsistency between the requirements of Rule 3660(h) and Rule 3611(e) [alternative method of resource acquisition]" in its omnibus filing in Proceeding No. 16A-0117E, citing discussion in Decision No. C10-0958 at Paragraph 66, but it does not follow that the removal of § 40-2-124(1)(f)(I), C.R.S. mandates the removal of the alternative method of resource acquisition rule *in addition to* the actual rule implementing this statutory directive, Rule 3660(h).

Accordingly, while the Company understands OCC's initial view that the removal of § 40-2-124(1)(f)(I), C.R.S. impacts both the alternative method of resource acquisition rule and Rule 3660(h), a review of the history and background of these two rules supports the continued inclusion of the alternative method of resource acquisition rule in the ERP Rules. It provides appropriate flexibility within the ERP Rules for acquiring resources where the requirements of Rule 3614(c)(II) and Rule 3614(c)(III) are satisfied by the filing

[14] Decision No. C02-793; at ¶ 2, Proceeding No. 02R-137E ("The intent of the NOPR is to revise the existing Integrated Resource Planning (IRP) process for electric public utilities subject to the Commission's jurisdiction. The Commission issued its February 26 NOPR after completing an IRP investigation under Docket No. 01M-250E. Numerous parties commented in the investigation, with recommendations ranging from a wholesale repeal of the current rules, to expanding the detail and scope of issues addressed in the current rules. As a result of this investigation, and from experience gained in the most recent Public Service Company IRP proceeding, the Commission issued the February 26 NOPR with the intent to adopt a more streamlined and flexible resource [*2] acquisition process. As stated in the NOPR, the Commission recognizes that the current IRP rules are too prescriptive, and the lengthy nature of the process outweighs its benefits in some areas. The Commission initiated this docket to consider whether the IRP process, as set forth in the existing rules, should be repealed or revised.")

utility. For these reasons, Public Service supports the removal of Rule 3660(h) but requests the Commission retain Rule 3614(c)(II) and Rule 3614(c)(III).

Dated this 30th day of October, 2020.

Respectfully submitted,

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