

Decision No. C15-0316

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0287E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO (A) FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE PAWNEE TO DANIELS PARK 345 KV TRANSMISSION PROJECT, AND (B) FOR SPECIFIC FINDINGS WITH RESPECT TO EMF AND NOISE.

**DECISION DENYING EXCEPTIONS
AND ADOPTING RECOMMENDED DECISION**

Mailed Date: April 9, 2015
Adopted Date: March 11, 2015

TABLE OF CONTENTS

| | | |
|-----|--|----|
| I. | BY THE COMMISSION | 2 |
| A. | Statement | 2 |
| B. | Background..... | 2 |
| C. | Public Comments..... | 5 |
| D. | OCC Exceptions | 6 |
| E. | Public Service Exceptions | 9 |
| 1. | Harvest Mile Substation | 10 |
| 2. | Reporting Requirements..... | 11 |
| F. | Adoption of Recommended Decision | 12 |
| II. | ORDER..... | 13 |
| A. | The Commission Orders That: | 13 |
| B. | ADOPTED IN COMMISSIONERS’ WEEKLY MEETING March 11, 2015..... | 14 |

I. BY THE COMMISSION**A. Statement**

1. Public Service Company of Colorado (Public Service or the Company) applied for a certificate of public convenience and necessity (CPCN) to construct the Pawnee to Daniels Park 345 kV Transmission Project (Project). Public Service also requested that the Commission make specific findings that the noise and electromagnetic field levels resulting from the Project will be reasonable.

2. By Decision No. R14-1405 (Recommended Decision) issued November 25, 2014, the Administrative Law Judge (ALJ) assigned to this proceeding granted Public Service the CPCN with the condition that construction does not begin before May 1, 2020, and found the projected electromagnetic field and noise levels for the Project to be reasonable.

3. Consistent with the discussion below, we deny all exceptions to the Recommended Decision, clarify one paragraph of the Recommended Decision, and adopt the remainder of the Recommended Decision as a decision of the Commission.

B. Background

4. On May 28, 2014, Public Service filed an application for a CPCN to construct the Project. The Project will consist of approximately 115 miles of new transmission investment originating at the Pawnee Generating Station, near Brush, Colorado, and terminating at the Daniels Park Substation, near Castle Pines, Colorado. The Project also includes a new Smoky Hill to Daniels Park 345 kV circuit and a new Harvest Mile Substation. Public Service estimates the Project will cost \$178 million.

5. According to Public Service, the Project: (1) completes the Company's 345 kV transmission backbone, running along the Front Range from the Pawnee Generating Station to the Comanche Generating Station; (2) ensures current and future transmission reliability; and

(3) meets the objectives of Senate Bill 07-100 by reaching a proven energy resource zone. Public Service states that the Project has been a part of the Company's long-range transmission plans since 2007.

6. The Colorado Office of Consumer Counsel (OCC) and Staff of the Colorado Public Utilities Commission filed notices of intervention by right and requests for a hearing. The Colorado Energy Consumers (CEC), which includes industrial and commercial customers operating facilities within Public Service's service territory, and the Rowley Downs Homeowners Association (Rowley Downs), which is bisected by the current Smoky Hill to Daniels Park transmission line, filed motions for permissive intervention. The Commission also received comments from the public voicing concerns about the Project.

7. The Commission referred the proceeding to ALJ G. Harris Adams for a public comment hearing and an evidentiary hearing. The ALJ granted intervention to CEC. The ALJ determined that for Rowley Downs to intervene, it must either obtain counsel or explain why it should not be required to obtain counsel under Rule 1201(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. Rowley Downs did not respond and was denied intervention.

8. On July 23, 2014, the ALJ held a public comment hearing in Parker, Colorado, where Rowley Downs and other members of the public commented on the Project.

9. On September 9, 2014, the ALJ held an evidentiary hearing.

10. The ALJ issued his Recommended Decision on November 25, 2014. The ALJ found that it is more probable than not that the future public convenience and necessity requires

the Project because Public Service faces an additional resource need between 1,200 to 1,400 MW by 2024.¹ The ALJ determined that approval of the Project without further delay best assures the availability of transmission resources to deliver power corresponding with the development of new generation.² The ALJ also determined that Public Service's application met the transmission CPCN requirements of Rule 3102 of the Rules Regulating Electric Utilities, 4 CCR 723-3, specifically the requirement that the applicant evaluate alternatives to the proposed project.³ Additionally, the ALJ found that the projected noise and electromagnetic field levels of the Project are reasonable.⁴

11. The ALJ therefore granted Public Service a CPCN for the Project, conditioned on construction of the Project not beginning until May 1, 2020.⁵ The ALJ reasoned that a delay in the start of construction balances the need for the Project with an interest to avoid premature customer rate impacts from the Project.⁶ The ALJ also imposed a semi-annual progress reporting requirement on Public Service.⁷

12. Public Service filed exceptions to the Recommended Decision, and the OCC and CEC filed responses to Public Service's exceptions. The OCC also filed exceptions, to which Public Service responded. Rowley Downs and other members of the public filed additional comments objecting to some of the language in the Recommended Decision.

¹ See Recommended Decision, ¶¶ 116-159.

² See *id.*, ¶¶ 116-127.

³ See *id.*, ¶¶ 143-159.

⁴ *Id.*, ¶¶ 184, 197.

⁵ *Id.*, Ordering ¶ 6.

⁶ *Id.*, ¶ 208.

⁷ *Id.*, Ordering ¶ 7.

C. Public Comments

13. Before the ALJ issued his Recommended Decision, approximately twice as many public comments raised objections to the Project than supported it. Commenters opposing the Project referenced: (1) potential decreases in property values; (2) degrading aesthetics of the community; (3) noise and safety concerns from electromagnetic fields; and, (4) the benefits of underground transmission lines. The comments in support of the Project generally cited reliability benefits from an expanded transmission grid and the increased ability for Public Service to add renewable resources to its system to diversify Colorado's energy portfolio.

14. The Recommended Decision's summary of the public comments states: "The vast majority of public comment supports [the] need for the overall project, but a majority also expressed siting concerns outside the scope of this proceeding. Several comments express specific concern regarding electromagnetic fields associated with the Project."⁸

15. The comments filed after the issuance of the Recommended Decision—including a petition signed by Rowley Downs—challenge the ALJ's statement that the majority of commenters support the Project. The comments filed after the Recommended Decision generally raise the same concerns about damaged views and property values, noise and electromagnetic fields, and support for placing the transmission lines underground. The Rowley Downs petition also argues that the ALJ erred by not requiring Public Service to examine alternatives to the Project and for concluding that the Company had established a need for the Project. The petition and several other comments assert that siting is a central issue in this proceeding.

⁸ *Id.*, ¶ 7.

16. After reviewing the full set of public comments, including those filed after the Recommended Decision, we conclude that more commenters oppose the Project than support it. Consistent with Rule 1509 of the Rules of Practice and Procedure, 4 CCR 723-1, which allows the Commission to accept public comment, we acknowledge that most of the public comments objected to the Project, referencing the proximity of the transmission lines to their residences and the Company's stated intentions to rebuild, refurbish, and expand them, with the alleged potential to damage views, diminish property values, and cause harm from increased electromagnetic levels.

17. We confirm that the Project's necessity and the associated potential noise and electromagnetic field levels are within the Commission's authority to make findings in this proceeding. However, consistent with the ALJ's statements in the Recommended Decision, the specific siting concerns expressed by the public are outside of the scope of this proceeding and should be addressed to the governing land use permitting authorities.

D. OCC Exceptions

18. The OCC requests that the Commission set aside the Recommended Decision and deny the CPCN for the Project. The OCC argues that the ALJ erred in: (1) determining that Public Service provided sufficient evidence to obtain a transmission CPCN; (2) discounting the weight of the OCC's evidence in opposition to the CPCN application; and, (3) restricting stakeholder participation in the CPCN proceeding. In sum, the OCC argues that the Commission's new transmission planning process, in which the Commission every two years approves statewide transmission plans submitted by the industry for the succeeding ten years,⁹ violates its transmission CPCN rules, specifically Rule 3102, 4 CCR 723-3, which requires a

⁹ See Rule 3627(a).

CPCN applicant to evaluate alternatives to a proposed project. According to the OCC, CPCN rules require that during the CPCN proceeding, stakeholders must be allowed to present alternatives to a proposed transmission project and applicants must evaluate alternatives, even if alternatives were considered in the discussions and meetings with stakeholders that eventually led to the approved statewide transmission plan. The OCC argues that Public Service did not adequately evaluate alternatives in the CPCN proceedings.

19. In its response to the OCC's exceptions, Public Service argues that it evaluated alternatives during its transmission planning process that culminated in the ten-year statewide transmission plan filed in 2014 and adopted by the Commission. The OCC participated in the 2014 transmission planning process, but it did not propose alternatives to the Project until the CPCN proceeding.

20. The ALJ determined that the Commission's decision adopting the 2014 Transmission Plan found that Public Service adequately evaluated alternatives.¹⁰ The ALJ incorporated the transmission planning process into the CPCN proceeding and found that Public Service's application for the Project here satisfied the CPCN rules.¹¹

21. We agree with the Recommended Decision. The transmission planning process allows utilities to comply with CPCN rules at an earlier stage than the CPCN application process, and provides for stakeholder input into statewide transmission planning before new generation is needed. After the passage of Senate Bill 07-100, which requires transmission planning before generation planning, the Commission established new transmission planning rules.¹²

¹⁰ See Decision No. R14-0845, ¶¶ 13-17, in Proceeding Nos. 14M-0110E, 13M-1167E, and 13M-1183E (issued July 18, 2014 by Commissioner Patton).

¹¹ Recommended Decision, ¶¶ 127-137.

¹² See Rules 3625 through 3627 of the Rules Regulating Electric Utilities, 4 CCR 723-3, adopted June 14, 2011 in Proceeding No. 10R-526E.

These rules require stakeholder involvement and evaluation of alternatives before the utilities present a ten-year statewide transmission plan to the Commission.¹³ The first statewide transmission plan was adopted in 2012.¹⁴ In his decision adopting the 2012 Transmission Plan, Commissioner Tarpey clarified the role of stakeholders in the transmission planning process, how and when alternatives must be evaluated, and that utilities and ALJs may rely on facts established through Commission approval of transmission plans in subsequent CPCN proceedings.¹⁵

22. The Commission's new transmission planning rules comport with the Commission's transmission CPCN rules. Rule 3102 requires CPCN applications to include, "[a]s applicable, information on alternatives studied, costs for those alternatives, and criteria used to rank or eliminate alternatives."¹⁶ When read in conjunction with the new transmission planning rules, an applicant can satisfy the CPCN rules through consideration of alternatives in the statewide transmission planning and subsequent Commission approval of a ten-year transmission plan. Rule 3102 does not bar the Commission from evaluating transmission alternatives outside of a CPCN proceeding.

23. Commission evaluation of alternatives and other transmission issues as part of the ten-year transmission planning proceedings furthers the objectives of Senate Bill 07-100 and important public policies. Through its transmission planning rules and decisions, the Commission has determined that the public interest requires utilities to ensure transmission availability before determining generation needs. In fact, transmission capability is now an input

¹³ Rule 3627 (c)(VI), (VIII), 4 CCR 723-3.

¹⁴ Decision No. R12-1431 in Proceeding Nos. 11M-872E, 11M-873E, and 12M-102E (issued on December 13, 2012 by Commissioner Tarpey).

¹⁵ *See id.*

¹⁶ Rule 3102(b)(VIII), 4 CCR 723-3.

into the Electric Resource Planning process. The collaborative statewide transmission planning process allows utilities to develop regional transmission projects, and it allows stakeholders to provide input into the process at an early stage, rather than waiting until individual utilities file CPCN applications for specific projects.

24. Although the OCC had an opportunity to present alternatives to the Project before these proceedings, it did not do so. According to Public Service, the Company has been planning to build the Project since 2007. The Project was included in Public Service's filings that lead to the 2012 Transmission Plan¹⁷ and in the 2014 Transmission Plan.¹⁸ The OCC participated in the 2012 and the 2014 transmission planning processes, but it did not propose alternatives to the Project until the CPCN proceeding. Because the OCC raised its concerns and proposed alternatives for the first time in the CPCN proceeding and after the Commission had approved the 2014 statewide transmission plan, Public Service did not need to consider them again as part of the CPCN proceeding.

25. We conclude that Public Service evaluated alternatives, included stakeholder input, and identified a need for the Project through regional transmission planning. We thus deny the OCC's exceptions and affirm the Recommended Decision's granting of the CPCN.

E. Public Service Exceptions

26. In its exceptions, Public Service requests: (1) to begin construction on the Harvest Mile Substation component of the Project before May 1, 2020; and (2) less onerous progress reporting requirements.

¹⁷ Public Service, "2012 10-year Transmission Plan Narrative Summary," filed July 10, 2012, in Proceeding No. 12M-102E.

¹⁸ Tri-State, Xcel Energy, and Black Hills Energy, "10-Year Transmission Plan for the State of Colorado," filed February 3, 2014, in Proceeding No. 14M-0110E.

1. Harvest Mile Substation

27. Public Service argues that immediate construction of the Harvest Mile Substation will address a current need due to existing transmission constraints at the Smoky Hill Substation. The Company also asserts that, because the Harvest Mile Substation will require acquisition of property, it may be more difficult to obtain permits and land use rights if construction is delayed until 2020.

28. The OCC supports the construction timing limitation for the Harvest Mile Substation, and argues that the record does not support allowing Public Service to construct and operate the Harvest Mile Substation independently from the Project's other component facilities. Likewise, CEC argues that Public Service did not prove an immediate need for the Harvest Mile Substation. According to CEC, Public Service's request to build one component of the Project earlier than the rest conflicts with the Company's testimony about the benefits of a comprehensive—rather than a piecemeal—approach. CEC suggests that Public Service could file a separate CPCN application for the Harvest Mile Substation and seek expedited relief, if an immediate and urgent need exists.

29. We agree with the OCC and CEC that Public Service has not provided sufficient proof that there is an immediate need for the Harvest Mile Substation separate from the need for the entire Project. While Public Service may not have anticipated that the ALJ would impose a delayed construction start date, the Company could have attempted to demonstrate an immediate need for certain components and a future need for the rest of the Project. We also agree with the ALJ that setting 2020 for the beginning of construction alleviates premature customer rate impacts from the Project, of which Harvest Mile Substation is a component. Barring Public Service from beginning construction until 2020 does not preclude Public Service from beginning the process for obtaining siting approvals and requisite permits from governing

land use authorities and for acquiring the necessary property rights. Public Service may file a separate application for authority to begin construction of the Harvest Mile Substation earlier than the rest of the Project. That application would determine expedited need but not specific siting or construction requirements, which would remain under the jurisdiction of the local land use agencies.

2. Reporting Requirements

30. The Recommended Decision requires Public Service to file semi-annual progress reports. The first report is due 30 days after the issuance of the final permit determining the route of the Project, and subsequent reports of monthly expenditures and progress are due every six months thereafter.

31. In its exceptions, Public Service argues that the disclosure of monthly expenditures and progress information is unnecessary and may reveal sensitive data. The Company requests to provide the information in a summary format every six months, similar to information it provides in other proceedings.

32. CEC argues that detailed reports are necessary to promote transparency and to protect ratepayers until the budget for the Pawnee to Daniels Park Project is finalized. CEC suggests that the Company seek protections for any sensitive data under the Commission's procedural rule.

33. We deny Public Service's exceptions and affirm the reporting requirement imposed by the Recommended Decision. Biannual progress reports that include monthly expenditures are necessary for the Commission and other interested persons to ensure prudent expenditures during the development and construction process. Public Service may seek protections for confidential information from the Commission.

F. Adoption of Recommended Decision

34. We affirm the Recommended Decision. Aside from our clarifications above concerning the public comment in this proceeding, we adopt the Recommended Decision without modification.

35. The ALJ carefully determined the necessity of the Project consistent with the Commission's growing familiarity with the proposed facilities and the future requirements of Public Service's overall system to meet customer loads and fulfill statutory objectives, including Senate Bill 07-100. Public Service proved by a preponderance of the evidence that the future public convenience and necessity requires, or will require, construction of the Project. Among the facts supporting this conclusion detailed in the Recommended Decision is the additional capacity needs to transmit between 1200 MW to 1400 MW by 2024, the constraint on existing transmission facilities supporting electric generation in northeast Colorado serving the Denver metropolitan area, and the inability of existing transmission to support future projected generation.

36. Approval of a CPCN here is also supported by Senate Bill 07-100. That law states that the Commission shall approve a CPCN for construction or expansion of transmission facilities that have been the subject of plans submitted to the Commission if:

- (a) The construction or expansion is required to ensure the reliable delivery of electricity to Colorado consumers or to enable the utility to meet the renewable energy standards set forth in section 40-2-124; and
- (b) The present or future public convenience and necessity require such construction or expansion.

§ 40-2-126(3), C.R.S. The ALJ's findings of the need to serve the Denver metropolitan area with additional capacity by 2024 also satisfy these criteria.

37. Our findings of need for the Project are commensurate with the Commission's authority to grant the Company a CPCN to construct the proposed facilities. As discussed above concerning the Harvest Mile Substation, local land use permitting authorities may consider the siting issues expressed in the public comment in this proceeding when Public Service applies for specific siting approvals.

38. We also support the ALJ's condition that construction of the Project not commence until May 1, 2020. However, the delayed start date for construction does not mean Public Service should discontinue immediately its efforts to implement the Project. The Company should use the time before May 1, 2020 to secure the necessary land use permits¹⁹ and property rights that will enable it to satisfy the need we found in this proceeding. Land use proceedings will allow further input from stakeholders on siting decisions.

39. The ALJ also carefully considered the evidence concerning noise and electromagnetic fields and correctly determined that the Project would meet the standards in the industry, Commission rules, and prior decisions. We support the ALJ's determinations that the projected noise levels and electromagnetic field levels for the Project are reasonable.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Decision No. R14-1405 filed on December 15, 2014, by the Colorado Office of Consumer Counsel are denied, consistent with the discussion above.

2. The exceptions to Decision No. R14-1405 filed on December 15, 2014, by Public Service Company of Colorado are denied, consistent with the discussion above.

¹⁹ Public Service witness Derek Holscher, Principal Agent of Siting and Land Rights, identifies the land use permitting agencies in his Direct Testimony, Hearing Exhibit No. 203, filed August 27, 2014.

3. Decision No. R14-1405, issued November 25, 2014, shall become a decision of the Commission, consistent with the discussion above.

4. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 11, 2015.**

(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

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners