

Decision No. C10-0874

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10M-245E

IN THE MATTER OF COMMISSION CONSIDERATION OF PUBLIC SERVICE COMPANY OF COLORADO PLAN IN COMPLIANCE WITH HOUSE BILL 10-1365, "CLEAN AIR – CLEAN JOBS ACT."

**ORDER ADDRESSING MOTIONS AND
SETTING A PUBLIC COMMENT HEARING**

Mailed Date: August 11, 2010
Adopted Date: August 11, 2010

I. BY THE COMMISSION

A. Statement

1. The Commission opened this Docket by Decision No. C10-0452 shortly after Governor Ritter signed House Bill 10-1365 (HB 10-1365) into law on April 19, 2010. Public Service Company of Colorado (Public Service or Company) is expected to file an emission reduction plan for coal-fired electric generating units on or before August 13, 2010 in compliance with HB 10-1365.

B. Discussion

1. Southwest Request for Amendment of Decision No. C10-0808

2. At the July 9, 2010 Status Conference, the Commission considered the scenarios Public Service proposed for inclusion in its emissions reduction plan. A number of parties, including Southwest Generation Operating Company, LLC (Southwest), requested alternative or modified scenarios be modeled as well. The Commission addressed these requests in Decision No. C10-0808.

3. Southwest now seeks modification of Decision No. C10-0808.¹ In its Motion to Amend (Southwest Motion) filed August 4, 2010, Southwest seeks a Commission order requiring Public Service to “work with Southwest Generation to include existing Southwest Generation assets as options to be modeled for the various [Public Service] coal-fired retirement scenarios.” Specifically, Southwest wants Public Service to: “(1) model additional options for replacement scenarios using Southwest Generation gas-fired plants; (2) ensure that the modeling fully account for the costs associated with starts for gas-fired turbines; and (3) account for the differences among options in integrating wind resources.” In support of this request, Southwest argues the Commission erred and violated HB 10-1365 by not ordering additional consideration of existing Independent Power Producer facilities.

4. Public Service filed a Response in opposition to the Southwest Motion on August 9, 2010. Public Service argues Southwest’s requested scenarios would not result in the number of generation sources necessary at Cherokee station to sustain acceptable transmission reliability and voltage stability in the Denver area. Public Service invokes its authority to withdraw its plan under § 40-3.2-205(4), C.R.S., stating it is unable to accept any plan that fails to preserve transmission system reliability and stability.

5. Southwest argues the Commission must order Public Service to model its preferred scenarios because HB 10-1365 requires the Commission to consider “the degree to which the plan will increase utilization of existing natural gas-fired generating capacity.” § 40-3.2-205(1)(d), C.R.S. However, the degree to which Public Service’s proffered plan utilizes existing natural gas-fired generating capacity is merely one of eight factors the Commission must

¹ Southwest pled its motion as an “Expedited Reargument or Reconsideration” of Decision No. C10-0808. Reconsideration, reargument, or rehearing is not permitted to interim decisions of the Commission. Therefore, we construe Southwest’s filing as a Motion to Amend Decision No. C10-0808 pursuant to § 40-6-112(1), C.R.S.

consider when evaluating Public Service's plan. *See* § 40-3.2-205(1), C.R.S. ("In evaluating the plan, the Commission shall consider the following factors . . ."). In other words, § 40-3.2-205(1), C.R.S., mandates how the Commission will weigh the pros and cons of a particular plan presented by Public Service. It does not mandate the contents of Public Service's plan, nor does it require development of plans that best satisfy each of the enumerated criteria. As such, the Commission finds nothing in the text of HB 10-1365 that mandates granting Southwest's Motion.

6. Further, the Commission finds granting Southwest's requested relief would be inappropriate. Southwest has not demonstrated why ordering Public Service to "work with Southwest" would be in the public interest at this time. In addition, it appears Southwest is making this proposal in an attempt to circumvent the Commission's stated preference that intervenors not introduce fully modeled alternative plans. Southwest wants the Commission to order Public Service to prepare Southwest's preferred plan. We decline to do so, and therefore will deny Southwest's Motion.

2. Staff Request for Amendment of Decision No. C10-0808

7. In Decision No. C10-0808, the Commission identified an alternative baseline scenario it would like Public Service to consider as part of its August 13, 2010 filing. This alternative baseline excludes the installation of Selective Catalytic Reduction (SCR) controls at Pawnee. In that Decision, we went on to state:

[W]e anticipate that by signaling our interest in the Pawnee SCR controls at this early stage, we will prompt this provision of additional information concerning [the Colorado Department of Public Health and Environment's (CDPHE)] assessment of Pawnee within the Company's emissions reduction plan. For example, CDPHE may elect to analyze the benchmark scenario without Pawnee to determine whether that scenario would meet the 70 percent to 80 percent NO_x reduction requirement of HB 10-

1365 and satisfy the requirements of the regional haze rule as suggested in Public Service's Report. Alternatively, Public Service may report to us in its August 2010 filing why this proposed alternative benchmark plan was rejected during CDPHE's preliminary consultations, consistent with paragraph 46 of Decision No. C10-0638.

Decision No. C10-0808 at ¶ 28.

8. On August 5, 2010, Staff of the Commission (Staff) filed a Motion to Amend Decision No. C10-0808 (Staff Motion).² In its Motion, Staff states its concern that the Colorado Department of Public Health and Environment (CDPHE) does not intend to evaluate the Commission's proposed alternative baseline scenario. Based on conversations between Staff and CDPHE and between Staff and Public Service, Staff states CDPHE will assess Pawnee as part of both Public Service's benchmark plan and Public Service's preferred plan. In other words, CDPHE will never assess any scenario within its regional haze State Implementation Plan that does not include SCR controls at Pawnee.

9. Staff goes on to suggest that the Commission would benefit from ordering CDPHE to assess a baseline "minimum plan" that includes emissions controls only on the Cherokee and Valmont units. This minimum plan was identified as "Benchmark 1.1" in Public Service's July 23, 2010 filing. Otherwise, Staff fears CDPHE's actions will reduce the array of options available to the Commission, precluding the Commission from considering early retirement of Pawnee and/or Hayden units without absorption of SCR control costs.

10. Public Service filed a Response opposing Staff's RRR Application on August 9, 2010. Public Service states it will provide sufficient evidence to allow the Commission to

² Staff pled its motion as an "Application for Rehearing, Reargument or Reconsideration" of Decision No. C10-0808. Reconsideration, reargument or rehearing is not permitted to interim decisions of the Commission. Therefore, we construe Staff's filing as a Motion to Amend Decision No. C10-0808 pursuant to § 40-6-112(1), C.R.S.

“isolate” the costs of emission controls it proposes at Pawnee and Hayden. Public Service further argues that, if the Commission wishes to exclude these controls at Pawnee or Hayden, it can ask CDPHE, and CDPHE can respond without being required to fully model Benchmark 1.1. In addition, Public Service states it believes CDPHE will require it to install SCR at Pawnee because SCR is necessary to meet reasonably foreseeable Clean Air Act requirements.

11. We believe Public Service may be correct in its assessment regarding the necessity of controls at Pawnee or Hayden. However, if emission controls at Pawnee or Hayden are in fact required, CDPHE must explain to the Commission why, in its expert opinion, Benchmark 1.1 is an unacceptable solution. As such, we will require CDPHE to complete a full assessment of Benchmark 1.1. This assessment shall be included in CDPHE’s September 17, 2010 filing, *unless*: (1) CDPHE’s preliminary assessment of Benchmark 1.1 indicates that it will not achieve at least a 70 percent to 80 percent reduction, or greater, in annual NOx emissions and satisfy the regional haze rule; or (2) CDPHE explains why CDPHE has otherwise rejected Benchmark 1.1, pursuant to paragraph 28 of Decision No. C10-0808 and Decision No. C10-0858. The Commission will therefore grant Staff’s Motion in part.

3. Concord Energy Intervention

12. Concord Energy LLC (Concord) filed a Motion for Leave to Intervene on August 5, 2010. Concord is a company that buys, sells, and transports natural gas, marketing its services in Colorado and throughout the Rocky Mountain Region. Public Service is a Concord customer.

13. Concord states it seeks leave to intervene at this late date “to protect its interest as a current supplier of natural gas as well as a potential supplier for Public Service’s HB1365 Plan natural gas needs.” Concord states it was only recently informed that its bid will be submitted as

one of a number of bids offered to Public Service and, as a result, “intervention is necessary to protect its interests in this proceeding.”

14. Public Service filed a Response to Concord’s Intervention on August 9, 2010. Public Service does not oppose intervention by Concord.

15. Any person “interested in or affected by” a decision of the Commission may intervene in a Commission proceeding. § 40-6-109(1), C.R.S. However, the standard for granting late filed interventions is far more discretionary. Rule 1401(a), 4 *Code of Colorado Regulations* 723-1, states “[t]he Commission may, for good cause shown, allow late intervention, subject to reasonable procedural requirements.” (Emphasis added.)

16. The Commission finds Concord has not offered good cause for its intervention, nor has Concord identified how it will improve the record in this case. As such, the Commission will deny Concord’s Motion for Leave to Intervene.

4. Peabody Work Paper Request

17. On August 6, 2010, Peabody Energy Corporation (Peabody) filed a request that the Commission order Public Service to produce certain documents under paragraph 38 of Decision No. C10-0452. Peabody alternatively requests that the Commission order Public Service to file all supporting work papers to its emissions reduction plan filing due on August 13, 2010.

18. Peabody explains that the Commission already contemplates the development and provision of work papers associated with its August 2010 filing, pointing to paragraph 11 of Decision No. C10-0639. That order requires Public Service to provide information on the Company’s firm and interruptible capacity allocations on the relevant natural gas pipelines, the total capacity on each of those systems, the tariffs and terms and conditions that will likely be

applicable, and the specific delivery capacity for natural gas to the relevant generating units, to the extent the Company has the information and that it pertains to the Company's August 2010 filing.

19. Public Service filed a Response to Peabody's Motion on August 9, 2010. Public Service explains that it should be able to compile its work papers, review them for confidentiality concerns, and provide them to the parties in accord with confidentiality rulings by Thursday, August 19, 2010.

20. The Commission will grant Peabody's Motion in part. We will require Public Service to provide all work papers supporting the Company's emissions reduction plan, in executable format, to the parties in this proceeding on or before August 19, 2010, consistent with established procedures for access to confidential and highly confidential material. In addition, the Company shall file with the Commission with the sections of those work papers addressing the gas pipelines in accordance with paragraph 11 in Decision No. C10-0639.

5. Public Comment Hearing

21. Given the important public policy implications of HB 10-1365, we find it useful to conduct an additional public comment hearing on Public Service's emissions reduction plan. We therefore schedule a public comment hearing on August 30, 2010, from 6:00 p.m. to 8:00 p.m. at the Hearing Room of the Mesa County Commissioners. This public hearing will be in addition to the Denver public comment hearing set by Decision No. C10-0808. This public comment hearing will come sufficiently in advance of the Rebuttal Testimony deadline so as to provide Public Service an opportunity to respond in writing to the information received at the public comment hearing.

22. We note that individual members of an association that may be a party in this Docket must present their views in this proceeding through testimony of the association that is offered during the evidentiary hearing. An Individual member of an association that is a party will not be permitted to make statements at the public comment hearing. Counsel for all parties shall be prepared to identify members of their respective clients at the public comment hearing or file a listing identifying members prior to the scheduled hearings.

23. If a person does not wish to attend the public hearing, but wishes to file comments, the person may send comments by mailing them to the Colorado Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, or by sending them electronically to pucconsumer.complaints@dora.state.co.us or through the Commission's website at <http://www.dora.state.co.us/puc/consumer/ConsumerComment.htm>

II. ORDER

A. The Commission Orders That:

1. The Request for Expedited Reargument or Reconsideration of Commission's Decision of July 30, 2010 Regarding Public Service of Colorado Modeling Scenarios filed by Southwest Generation Operating Company, LLC on August 4, 2010, is denied.

2. The Staff of the Commission's Application for Rehearing, Reargument, or Reconsideration filed on August 5, 2010 is granted in part, consistent with the discussion above.

3. The Motion for Leave to Intervene on Behalf of Concord Energy LLC, filed on August 5, 2010, is denied.

4. Peabody Energy Corporation's Request for Order Requiring Production of Documents Pursuant to Paragraph 30 of Decision No. C10-0452 or, Alternatively, Motion for

Production of Workpapers Supporting the August 13, 2010 Filing and Shortened Response Time is granted in part, consistent with the discussion above.

5. A public comment hearing is scheduled for:

DATE: August 30, 2010

TIME: 6:00 p.m. through 8:00 p.m.

PLACE: Mesa County Commissioners Public Hearing Room
544 Rood Avenue
Grand Junction, Colorado 81502

6. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 11, 2010.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners