COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203 Certiorari to Colorado Court of Appeals Court of Appeals Case No. 2026CA1087 Appeal from the Cheyenne County District Court Honorable Michael John Davidson Case No. 2026CV30001 **Petitioner**: PUBLIC SERVICE COMPANY OF COLORADO, a Colorado Corporation; v. **Respondents**: DRYLAND PARTNERS, LLC, a Colorado limited liability company; THE BANK OF BURLINGTON, a Colorado corporation; DUSTY ROSE WIND, LLC, a Delaware limited liability company; and GAILA MITCHEK, in her official capacity as Treasurer and Public Trustee of Cheyenne County, Colorado.	**▲COURT USE ONLY▲**
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SIERRA CLUB'S *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 29, 32, and 53, including all formatting requirements in these rules. Specifically, I certify that:

> The brief complies with the word limits set forth in C.A.R. 53(g), because the brief contains 2,841 words; and
>
> The brief complies with the content and form requirements in C.A.R. 29, 32, and 53 applicable to an *amicus curiae* brief.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28, 29, and 53.

Respectfully submitted this 27th day of August, 2026.

/s/ Matthew Gerhart
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IDENTIFY AND INTEREST OF *AMICUS CURIAE*

Sierra Club is the nation's oldest and largest environmental organization. Sierra Club has over 17,000 dues-paying members in Colorado. Unless this Court intervenes, Sierra Club and its individual members will bear the significant costs of the district court's erroneous decision.

Sierra Club's members have direct economic interests in Public Service Company of Colorado's ("PSCo's") petition. Thousands of Sierra Club's members are electric customers of PSCo. As explained below, the district court's decision will delay wind projects that were scheduled to provide affordable, clean electricity to PSCo's customers this year. The delay will increase costs for PSCo, which PSCo will in turn pass on to its customers, including Sierra Club members.

Moreover, Sierra Club's members have direct health and environmental interests in the outcome of the petition. The Public Utilities Commission ("PUC") approved the wind projects for which PSCo sought an easement as part of a statutorily-mandated plan to reduce air pollution. By delaying PSCo's ability to transmit electricity to customers from two large wind projects, the district court's decision will increase air emissions, because the wind projects will be unable to displace more expensive and more polluting power plants. As a result, Sierra Club members will breathe dirtier air where they live, work, and recreate.

ARGUMENT

The Court may grant a writ of certiorari before judgment if any of three factors is met, including whether "the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate determination in the supreme court." C.A.R. 50(a)(3). PSCo's petition satisfies each of the three factors in C.A.R. 50(a). However, given Sierra Club's familiarity with the consequences to the public of the district court's order, this brief addresses only the third factor.

The district court's decision denied PSCo's motion to take immediate possession of an easement necessary to connect to the electric grid two wind generation projects: the 603 megawatt ("MW") Singing Grass project; and the 450 MW Cheyenne Ridge II project. PUC Proceeding No. 25A-0112E, Recommended Decision No. R25-0667 at ¶ 19 (Sept. 16, 2025) [hereinafter, *CPCN Decision*].[1] The combined nameplate capacity from these two projects exceeds the size of every single generating unit in the State: at over 1,000 MW, these combined projects are larger than the 750 MW Comanche Unit 3, which is the single largest electric generating unit in Colorado. In addition, Singing Grass is tied with another

[1] In deciding whether to grant a petition for a writ of certiorari, neither C.A.R. 50 nor this Court's precedent limit the Court to the evidence before the lower tribunal. Instead, this Court may consider materials that were not before the lower court to determine whether the case is of imperative public importance under C.A.R. 50(a)(3).

wind project for the title of the largest renewable energy project in the State.[2] The sheer size of the projects at issue in this case weighs in favor of finding that this case is of imperative public importance.

There are two primary sets of reasons why this case is of imperative public importance. First, timely connecting the Singing Grass and Cheyenne Ridge II wind projects to the electric grid is of imperative public importance. The district court's decision prevents the public from the receiving the significant economic and emissions benefits of these two wind projects. Second, the district court's statutory interpretations threaten to prevent, or at least delay, PSCo's and other utilities' use of eminent domain to acquire the rights needed to deliver electricity to customers from other pending and future projects across Colorado.

I. This case is of imperative public importance because the district court's decision will increase costs for more than 1.5 million customers and disrupt or delay public health benefits throughout the State.

As Colorado's largest electric utility, and as an investor-owned utility, PSCo is regulated by the Public Utilities Commission. *See generally* Colo. Const. Art. XXV; 4 Colo. Code Reg. § 723-3. The PUC first approved the Singing Grass and Cheyenne Ridge II wind projects at the conclusion of a three-year, fully litigated proceeding that featured a competitive bidding process. PUC Proceeding No. 21A-

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[2] In the Near-Term Procurement, the PUC approved Bid 127, a 608 MW wind project which is roughly the same size as Singing Grass. PUC Proceeding No. 21A-0141E, Decision No. C26-0262 at ¶¶ 1, 20-23 (approving Bid 127).

0141E, Decision No. C24-0052 (Jan 23, 2024) [hereinafter, *Phase II Decision*]; *CPCN Decision* at ¶ 19. Competition for PUC approval was fierce: PSCo received over 1,000 bids. PUC Proceeding No. 21A-0141E, 120-Day Report at 11. Out of over 1,000 bids, these two wind projects rose to the top and were among only a handful of projects that the PUC approved.

The PUC found that the portfolio that included these two wind projects is "in the public interest." *Phase II Decision* at ¶¶ 143-44. Moreover, the PUC found that these two wind projects were part of a portfolio that "will likely reduce costs to customers." *Id.* at ¶ 143. Indeed, the PUC approved the portfolio that includes these two wind projects to ensure that PSCo can "provide electrical service at a reasonable cost and rate impact" to customers. *Id.* at ¶ 111. The PUC also approved the portfolio containing these two wind projects to reduce harmful air emissions, including to meet PSCo's statutory obligation to reduce carbon dioxide emissions. *Id.* at ¶¶ 96, 98, 102.[3] The PUC first approved these two projects with the expectation that they would begin providing electricity to the grid in 2026. PUC Proceeding No. 21A-0141E, Notice Regarding Updated List of Projects in the Approved Portfolio at 2 (Apr. 12, 2024).

The district court's decision upends the portfolio that the PUC found to be in the public interest and necessary to comply with Colorado law. The delay in these

[3] Section 40-2-125.5(3)-(5), C.R.S. required PSCo to file, and the Commission to approve, a plan that reduces carbon dioxide emissions associated with PSCo's electricity sales by 80% by 2030 relative to 2005 baseline emissions.

two projects that will result from the district court's decision will increase costs for PSCo's more than 1.5 million electric customers and increase harmful air emissions throughout the State, as explained more fully below.

A. This district court's decision will increase costs for PSCo, which will pass those costs on to more than 1.5 million customers.

The district court does not grapple with PSCo's status as a public utility. Under Colorado law, PSCo is entitled to recover from customers prudently-incurred costs necessary to comply with PUC decisions. 4 Colo. Code Reg. § 723-3-3617(d). Here, the PUC instructed PSCo to pursue development of the Singing Grass and Cheyenne Ridge II projects. *Phase II Decision* at Ordering ¶ 2; *CPCN Decision* at ¶ 23.

The district court's decision will increase PSCo's costs to comply with the PUC's order to pursue these two wind projects, and PSCo will pass those increased costs on to customers, in two ways. First, the delay to the two projects will drive up project costs because of several factors: inflation; costs to store and maintain equipment before it can be deployed; costs to redo permits that expire; etc. *Cf.* PUC Proceeding No. 21A-0141E, Decision No. C24-0678-I at ¶¶ 18, 20, 22 (discussing how delay in projects can increase costs because of trends in inflation, interest rates, equipment availability, and other factors). Second, the delay to the two projects will force PSCo to spend money to acquire and/or generate replacement power, i.e., to replace the power that would have been generated from the wind projects. *Cf.* PUC Proceeding No. 25V-0480E, Decision No. C25-0892 at ¶¶ 71, 74 (Dec. 10, 2025) (discussing issues regarding replacement power when a generator is unexpectedly unavailable). Given that wind generation's variable cost is close to zero, any replacement power is unlikely to be cheaper, and will almost certainly be more expensive, than the electricity from these two wind projects.

In sum, the district court's decision will lead PSCo's 1.5 million customers to pay twice: they will pay for the increased costs of these two wind projects that result from the district court delaying the connection of the projects to the electric grid; and they will also pay for the power that PSCo must procure as a substitute for the wind energy that cannot be transmitted onto the electric grid because of the district court's decision. A case regarding a district court decision that forces more than 1.5 million captive ratepayers to pay increased costs is of paramount public importance.

B. This district court's decision will disrupt or delay public health benefits.

The PUC approved these two wind projects as part of a plan to decrease air pollution. *Phase II Decision* at ¶¶ 96, 98, 102. These two wind projects were key elements of a portfolio that would reduce nitrogen oxide and sulfur dioxide emissions from PSCo's generating units relative to a business-as-usual scenario. *Compare* PUC Proceeding No. 21A-0141E, 120-Day Report, Appendix T at 21 *with id.* at 23 (showing the difference in NOx and SOx emissions between the reference case plan, Portfolio 0, and the portfolio the PUC approved, Portfolio 2). Nitrogen oxide and sulfur dioxide cause or contribute to a range of serious diseases, such as heart attacks, respiratory disease, and asthma, and also contribute to premature death.[4] They also contribute to the ozone pollution that plagues wide swaths of Colorado in the summer months, which has led the Environmental Protection Agency to find that Colorado violates federal health standards for ozone pollution, 89 Fed. Reg. 59,832 (July 24, 2024).

All else equal, delivering more wind energy onto the electric grid displaces higher-cost, higher-emitting energy sources (such as electricity generated from fossil fuels). PSCo's power plants that burn fossil fuels to generate electricity are located across Colorado. PSCo owns and operates coal units in Pueblo, Hayden, and Craig. PUC Proceeding No. 24A-0442E, Hearing Exhibit 101, Att. JWI-2, Volume 2 (Technical Appendix, Rev. 2) at 83-85. PSCo also receives electricity from gas-fired units located in counties across the State, including in Alamosa, Arapahoe, Denver, Pueblo, Morgan, and Weld Counties. *Id.* Increased wind generation from these two projects could displace generation from any of these coal or gas units, thereby decreasing emissions and improving public health.

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[4] *See* United States Environmental Protection Agency ("EPA"), *Sulfur Dioxide Basics*, *available at* https://www.epa.gov/so2-pollution/sulfur-dioxide-basics (last updated Jan. 2, 2026); EPA, *Basic Information about NO2*, *available at* https://www.epa.gov/no2-pollution/basic-information-about-no2 (last updated June 24, 2026).

Had the district court's decision not delayed these two wind projects, the projects were on track to improve public health in large swaths of the State. This case is of imperative public importance because the district court's decision will delay important public health benefits from connecting these wind projects to the electric grid.

II. This case is of imperative public importance because the district court's decision could delay other pending and future electric projects throughout Colorado.

The district court's decision rests in large part on the remarkable proposition that even though the government agency charged with regulating PSCo, the Public Utilities Commission, has found in two separate cases that these wind projects are in the public interest,[5] that PSCo's efforts to deliver electricity from these projects to 1.5 million customers is not for a public use or purpose. District Court Order at ¶¶ 22, 28, 32. This brief will not dwell on the many reasons that the district court's conclusion has no basis in fact or law. Instead, the court's conclusion renders this case of imperative public importance because of the implications for PSCo-owned projects beyond the two wind projects at issue in the district court.

[5] The PUC first found that the Singing Grass and Cheyenne Ridge 2 projects are in the public interest in Proceeding No. 21A-0141E in Decision No. C24-0052. The PUC then approved certificates of public convenience and necessity for the projects in Proceeding No. 25A-0112E in Decision No. R25-0667 (which became the PUC's final decision by operation of law after no party filed exceptions to the recommended decision).

Under the district court's interpretation and application of governing statutes, it would be difficult if not impossible for PSCo to use eminent domain for PSCo-owned projects beyond the Singing Grass and Cheyenne Ridge II wind projects. Those two wind projects are merely the tip of the iceberg. PSCo needs to secure access to land to transmit electricity to the grid from many other new, PSCo-owned generation projects.

Earlier this year, the PUC approved PSCo's acquisition of nearly 4,000 MW of new generation and storage projects, including projects owned by PSCo. PUC Proceeding No. 21A-0141E, Decision No.'s C26-0081, C26-0117, C26-0262. Just like the two wind projects at issue here, these additional PSCo-owned projects will need lines that transmit the electricity from the generation facility to the nearest substation and then onto the electric grid. The district court's decision threatens PSCo's ability to connect to the grid these projects that the PUC has approved, because, just like the two wind projects at issue here, PSCo will own the generation projects and the gen-tie line will be exclusively for transmitting electricity from the generator to the nearest substation. The district courts categorized such uses as not for a public purpose, District Court Opinion at ¶¶ 22, 32, effectively prohibiting PSCo from using eminent domain to deliver electricity from projects the PUC has already approved.

Moreover, the problems created by the district court's decision are not limited to the projects mentioned above that the PUC approved earlier in 2026. Instead, the PUC has scheduled additional procurements for PSCo in 2027, 2028, and 2029. PUC Proceeding No. 24A-0442E, Decision No. C25-0747 at ¶ 107. It can reasonably be expected that these future procurements will result in PSCo-owned projects for which PSCo will need to acquire land to transmit the project's electricity to the nearest substation and then onto the electric grid. Every PSCo procurement in recent years has resulted in the PUC approving PSCo's acquisition of PSCo-owned projects. *E.g., CPCN Decision* at ¶¶ 19-22 (discussing three PSCo-owned projects approved by the PUC in 2024); Decision No. C26-0262 at ¶¶ 1, 20-23 (approving a Company-owned wind project in 2026). The 2027, 2028, and 2029 procurements will be no different. Indeed, the PUC decision governing the 2027 procurement provides for a minimum amount of PSCo-owned resources to replace Comanche Unit 3, with a 50% PSCo-ownership target thereafter, so long as the evidence demonstrates that there is a need for new resources and the plan is cost-effective. PUC Proceeding No. 21A-0141E, Decision No. C22-0459 at ¶¶ 49, 99.

The district court's decision thus threatens the ability of Colorado's largest electric utility to deliver electricity to customers from not just the Singing Grass and Cheyenne Ridge II wind projects, and not just the additional PSCo-owned projects the PUC approved in 2026, but future PSCo-owned projects the PUC will approve in 2027 and future years. It is of imperative public importance that the Court grant PSCo's petition and reverse a decision that poses serious obstacles to delivering electricity throughout Colorado.

CONCLUSION

Over 1.5 million customers depend on the electricity that PSCo provides to power schools, hospitals, airports, government buildings, businesses, and homes. This case is of imperative public importance because the district court's ruling prevents PSCo from delivering electricity to customers from two of the largest electricity projects in the State. By delaying PSCo's ability to deliver cheap, clean electricity to the grid, the decision will increase costs and air pollution for the public. Moreover, the district court's decision threatens PSCo's ability to deliver electricity to customers from other pending and future projects that PSCo owns or will own. In recognition of the imperative public importance of this case, the Court should grant the petition for a writ of certiorari.

Respectfully submitted this 27th day of August, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I have duly served the foregoing **SIERRA CLUB'S *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI** upon all parties and their counsel of record by e-filing with the Colorado Courts E-Filing system maintained by the court.

/s/ Thomas Phillips
Thomas Phillips