

Decision No. C23-0594-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0141E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2021 ELECTRIC RESOURCE PLAN AND CLEAN ENERGY PLAN.

**INTERIM COMMISSION DECISION GRANTING,
IN PART, MOTION FOR PARTIAL WAIVER OF
RULES 3613(D)-(H) TO PROVIDE AN ADDITIONAL EXTENSION TO
FILE THE 120-DAY REPORT
AND SETTING RESPONSE TIME**

Mailed Date: September 7, 2023
Adopted Date: September 6, 2023

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission grants, in part, the Joint Motion for Partial Waiver of Rules 3613(d)-(h) to Provide Phase II Process Modifications (Joint Motion for Third Extension) by vacating the current September 11, 2023 deadline and permitting Public Service Company of Colorado (Public Service or the Company) through September 18, 2023 to file the 120-Day Report. The Commission permits responses to the remainder of schedule considerations in Phase II, including those proposed in the Joint Motion for Third Extension and those proposed as alternatives in the response in opposition to the Joint Motion for Third Extension filed by the Colorado Independent Energy Association, the Colorado Solar and Storage Association and Solar Energy Association, and Interwest Energy (Joint IPP Interests). Such responses shall be filed no later than September 8, 2023.

B. Background

2. On August 3, 2022, the Commission issued Decision No. C22-0459 addressing Public Service's Application for Approval of the 2021 Electric Resource Plan (ERP) and Clean Energy Plan (CEP) and approving, in part, the Updated Non-Unanimous Partial Settlement Agreement (Phase I Decision). Among other things, the Phase I Decision directed Public Service to issue Requests for Proposals (RFPs) for an all-source, competitive bidding process to meet its resource need.

3. On December 1, 2022, Public Service issued its 2022 All-Source RFPs. Bids were due by March 1, 2023.

4. Per Rule 3613 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3, the receipt of the bids sets the timeline for several Phase II events, including when the Company must file the 120-Day Report.¹ The 120-Day Report, in turn, sets deadlines for several other filings, including the report from the independent evaluator, the Phase II comments from the intervenors, and the Commission's Phase II decision.²

5. By Decision Nos. C23-0246-I³ and C23-0522-I,⁴ the Commission granted the Company's first and second unopposed motions to extend the deadline for the 120-Day Report as well as all associated deadlines. Through these decisions, the 120-Day Report that was initially due June 29, 2023, was ultimately required to be filed no later than September 11, 2023.

¹ Rule 3613(d).

² See Rule 3613(e)-(h).

³ Issued April 13, 2023

⁴ Issued August 7, 2023

C. Joint Motion for Third Extension

6. On September 5, 2023, the Company, Trial Staff of the Colorado Public Utilities Commission (Staff), and the Independent Evaluator, Accion Group, LLC (IE) (Joint Filers), filed the Joint Motion for Third Extension. Joint Filers seek modifications to the Phase II procedural schedule, including that the Commission: (1) vacate the current September 11, 2023 deadline for the Company’s 120-Day Report and grant a 7-day extension until September 18, 2023 for the Company to file the 120-Day Report; (2) provide the IE with an additional eight days to file the IE Report; and (3) provide intervenors an additional seven days to file comments on the 120-Day Report (allowing a total comment period of 60 days from the filing of the report).

7. In the Joint Motion for Third Extension, Joint Filers propose the following schedule:

Procedural Activity	Current Date	Proposed New Date
120-Day Report	September 11, 2023	September 18, 2023
IE Report	October 11, 2023	October 26, 2023
Intervenor’s Comments	October 26, 2023	November 17, 2023
Company’s Response Comments	November 10, 2023	December 4, 2023
Commission Decision	December 11, 2023	January 11, 2024

8. Joint Filers argue that they these changes are important for several reasons, stating that they are “mindful of the process for bids to come to fruition given timing challenges experienced in this unprecedented solicitation.” The Joint Motion for Third Extension further explains that the Company intends to notify bidders included in the Preferred Plan, and potentially

back-up bidders, on a confidential basis of their selection on September 11, 2023. The filing explains that this will allow the select bidders to begin to take steps to move forward and develop projects, understanding that the Phase II Decision will be the ultimate approval of projects in the approved resource plan. Notably, Joint Filers state that this action does not require a Commission finding.

9. Joint Filers argue that the modest 7-day extension to the timing for the filing of the 120-Day Report allows the IE and the Company additional time to vet the series of portfolios to be presented in the 120-Day Report. Joint Filers represent that the IE believes it will be better to have robust review and testing and that additional time should be provided for the Company, working with the IE, to prepare and present final portfolios. In turn, this will give the Commission and intervenors confidence that such portfolios have had rigorous review and will enable the Commission to have thorough and complete understanding of the options presented.

10. In addition, Joint Filers state that the process has been far more complex than prior Phase II processes, with a solicitation that has resulted in over 1000 submitted bids and the use of new modeling software, with “several gigawatts of new resources and billions in new clean energy-related investments across the State of Colorado.” The pleading argues that this complexity, in turn, drives the need for additional IE and intervenor time to prepare the IE Report and comments respectively, and recognizes that the Commission may also need additional time to review the filings and report.

11. The Company therefore seeks associated waivers of Commission rules to accommodate the proposed, updated schedule, and further that any subsequent deadlines that flow from the 120-Day report that are not set forth in Commission Rules (*i.e.*, the deadline for the Phase II emission verification report from the Colorado Department of Public Health and Environment

(CDPHE) and the deadline for the Company to initiate the PIM stakeholder process) be adjusted accordingly. Public Service represents in its filing that a number of parties do not oppose the Joint Motion for Third Extension. However, the Company further states that Joint IPP Interests oppose the motion.

D. Response from the Joint IPP Interests

12. Joint IPP Interests filed their response in opposition to the Joint Motion for Third Extension on September 5, 2023, and propose alternate procedural deadlines. Joint IPP Interests argue that this latest extension is not for the Company to complete its modeling, analysis, or the 120-Day Report, but instead “for the benefit of the IE and Staff, as well as a significant extension for Public Service’s own reply comments.”

13. The response filing argues that this request “is not incremental – includes a full month longer, at a minimum, for a Phase II decision” The Joint IPP Interests request that the Commission retain the September 11, 2023 filing deadline, and the anticipated December 11, 2023 decision date and “avoid the unworkable proposal where some bidders are notified about Phase II ERP portfolios, but parties (including the Joint IPP Interests that represent the interests of the bidding community, are not.”

14. Joint IPP Interests propose a “compromise”⁵ schedule for a Commission decision by December 15, 2023, to accommodate the IE, Staff, and Public Service that includes the following: 12-Day Report due September 11, 2023; IE Report due October 18, 2023; Intervenor’s Comments due November 3, 2023; Company’s Response Comments due November 22, 2023; and a Commission Decision on Phase II by December 15, 2023.

⁵ It is not included in the Joint IPP Interests’ filing whether other parties in addition to the Joint IPP Interests support or oppose the proposed alternative schedule.

15. Joint IPP Interests state that this modified schedule allows additional extra time for the IE, commenters, and the Company, but also recognizes that in a Phase II ERP there is no discovery allowed by parties, no hearing to prepare for, and that Public Service has worked with the IE for the entire process – arguing there is no justification for additional time for Public Service to reply to party comments or to the IE than that afforded by the Commission’s rules.

16. Joint IPP Interests counter that alternatives exist to allow the IE and Staff additional time in the Phase II process – “chiefly by reducing the proposed period in which Public Service may reply to Comments.” The filing continues that the IPP projects will be prejudiced by an additional delay that could postpone final decisions in this matter through March of 2023 to consider requests for rehearing, reargument, and reconsideration, and that the Company “has not offered that bidders may extend the in-service dates of their projects 105 days into 2026, nor allowed 2026 or 2027 [in-service date] projects to be extended at all....”

E. Findings and Conclusions

17. Through this decision we permit a one-week extension for the filing of the 120-Day Report through September 18, 2023. We also permit responses to be filed addressing the other proposed schedule changes for the remainder of the Phase II process.

18. Further delay remains of concern. However, we recognize the significant complexity of this Phase II process in relation with past ERPs. As recognized by Joint Filers, the Company has never been prohibited from conferring with potential preferred bidders in finalization of its 120-Day Report and no Commission finding is required regarding conferral. We are persuaded that the one-week extension will better enable the Company and the IE, in accordance with Commission rules, to finalize and vet the 120-Day Report to assist the Commission and party commenters.

19. For this limited extension, we therefore grant, in part, the requested partial waivers of Rules 3613(e)-(h) and permit filing of the Company's 120-Day Report on September 18, 2023.

20. Consistent with our prior orders, we remain concerned with continued extension of the Phase II process. We therefore deny the embedded request to waive response time and permit response to the proposed modifications to the Phase II timelines included in the Joint Motion for Third Extension and as suggested in the Joint IPP Interests' counterproposal.⁶ Responses are permitted through Friday, September 8, 2023.

21. Through future decision, the Commission will address further modifications to the schedule for Phase II.

II. ORDER

A. The Commission Orders That:

1. The Joint Motion for Partial Waiver of Rules 3613(d)-(h) to Provide Phase II Process Modifications and Request for Waiver of Response Time (Joint Motion for Third Extension), filed on September 5, 2023, is granted in part, consistent with the discussion above.

2. Public Service Company of Colorado shall file its 120-Day Report no later than September 18, 2023.

3. Response time to the Joint Motion for Third Extension and regarding further proposed modifications to the Phase II schedule are permitted through September 8, 2023.

4. The Commission will address any further schedule modifications through future order.

⁶Responses September 8, 2023, are permitted to the initial proposal in the Joint Motion for Third Extension, as well as to the alternative proposal set forth in the Joint IPP Interests counterproposal filing.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 6, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

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Commissioners