

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0356E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER AUTHORIZING IT TO MODIFY AND EXTEND ITS ELECTRIC QUALITY OF SERVICE PLAN THROUGH 2026.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
EXTENDING STATUTORY DEADLINE, ADDRESSING
INTERVENTIONS, SCHEDULING EVIDENTIARY
HEARING, AND ESTABLISHING DEADLINES AND
PROCEDURES**

Mailed Date: September 13, 2023

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I. STATEMENT, SUMMARY AND BACKGROUND**A. Summary**

1. This Decision extends the statutory deadline for a final Commission; addresses interventions; schedules a hybrid evidentiary hearing for April 2 to 4, 2024; and establishes deadlines and procedures relating to the evidentiary hearing.

B. Procedural History¹

2. On June 30, 2023, Public Service Company of Colorado (Public Service or the Company) filed the above-captioned Application with testimony.

3. On July 7, 2023, the Commission provided public notice of the Application and established a 30-day deadline to file interventions except for Colorado Public Utilities Commission Trial Staff, whose deadline was set for seven days after the Notice expires.²

4. On July 21, 2023, Staff filed a Notice of Intervention of Right by Trial Staff of the Commission (Staff), Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

5. On July 24, 2023, the Colorado Energy Consumers (CEC) filed an Unopposed Motion to Permissively Intervene.

6. On August 1, 2023, the City of Boulder (Boulder) filed a Motion for Permission to Intervene.

7. On August 2, 2023, the City and County of Denver (Denver) filed a Motion to Permissively Intervene.

¹ Only the procedural history necessary to understand this Decision is included.

² Notice of Application, filed on July 6, 2023.

8. On August 7, 2023, Energy Outreach Colorado (EOC) filed a Motion to Intervene and Entry of Appearance.

9. On August 9, 2023, the Commission deemed the Application complete and referred the matter for disposition to an Administrative Law Judge (ALJ).

10. On August 10, 2023, the Office of the Utility Consumer Advocate (the UCA) filed a Motion for Late-Filed Intervention by Right and Entry of Appearances (UCA's Late-Filed Intervention by Right).

11. To move this matter forward, the ALJ informally contacted the parties via email asking them to submit a proposed procedural schedule (including hearing dates) by August 31, 2023; the ALJ included potential hearing dates in this communication.³ In response, on August 31, 2023, counsel for Public Service responded that the majority of the parties believe extraordinary circumstances exist justifying a 130-day extension of the statutory deadline for a final Commission decision to issue, consistent with § 40-6-109.5(4), C.R.S., and suggested hearing dates and a procedural schedule that aligns with such an extension.⁴ The ALJ advised the parties that she would schedule a prehearing conference for September 8, 2023 at 1:00 p.m. at which extraordinary circumstances can be established, consistent with the requirements of § 40-6-109.5(4), C.R.S., and a procedural schedule established.⁵

12. By Decision No. R23-0582-I, issued on August 31, 2023, the ALJ scheduled the prehearing conference for September 8, 2023 at 1:00 p.m.

13. The ALJ held the prehearing conference as noticed, at which all parties appeared. This Decision outlines the rulings made during the prehearing conference.

³ Email with Parties filed August 31, 2023 (Email with Parties) at 3-4.

⁴ Email with Parties at 1-3.

⁵ Email with Parties at 1.

II. FINDINGS AND CONCLUSIONS

A. Interventions

14. During the prehearing conference, the ALJ acknowledged that Staff properly intervened as of right and is a party to this Proceeding.⁶ The ALJ also noted that Public Service filed no response or objection⁷ to any of the other requests to intervene, and that therefore, the ALJ construes the Interventions as unopposed. Based on this, and the information provided in their collective requests to intervene, the ALJ granted CEC's, Boulder's, Denver's, and EOC's requests to intervene, and the UCA's Late-Filed Intervention by Right. The ALJ also noted that given that a procedural schedule had not yet been established, UCA's late Intervention causes no prejudice to any party.

15. Based on the foregoing, the parties to this Proceeding are: Public Service, Staff, CEC, Boulder, Denver, EOC, and the UCA.

B. Time to Issue a Final Commission Decision

16. Public Service filed testimony with its Application and the Commission deemed it complete on August 9, 2023. As such, under § 40-6-109.5(1), C.R.S., the Commission must issue a final decision within 120 days after the application is deemed complete, unless the Commission finds that additional time is necessary, in which case, this deadline may be extended by an additional 130-days.⁸ For the reasons discussed below, the ALJ finds that additional time is

⁶ See Rule 1401(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁷ Responses to requests to permissively intervene must be filed within seven days. See Rule 1401(d), 4CCR 723-1

⁸ § 40-6-109.5(1), C.R.S.

necessary for a final decision to issue, and extends the statutory deadline for a final Commission decision by an additional 130 days (for a total of 250 days), as allowed by § 40-6-109.5(1), C.R.S.

17. Section 40-6-109.5(4), C.R.S., creates an exception to the presumed maximum 250-day timeline discussed above. Specifically, it provides that when the Commission holds a properly noticed hearing at which the existence of extraordinary conditions is established, and the Commission determines that extraordinary conditions exist, it may further extend the statutory deadline for a final Commission decision by an additional 130 days, for a total maximum of 380 days to issue a final decision (from the date an application is deemed complete).⁹

18. As noted, the parties first presented their position that they believe extraordinary conditions exist justifying an additional 130-day extension of the deadline for a final Commission decision per § 40-6-109.5(4), C.R.S., via email on August 31, 2023.¹⁰

19. As required by § 40-6-109.5(4), C.R.S., the ALJ scheduled a duly noticed prehearing conference for September 8, 2023.¹¹ The decision scheduling the prehearing conference explicitly provided notice that during the hearing, the parties would be given an opportunity to establish that extraordinary circumstances exist justifying a 130-day extension of the statutory deadline for a final Commission decision, per § 40-6-109.5(4), C.R.S.¹²

20. During the prehearing conference, Public Service, (with Interveners' support) explained that extraordinary conditions exist due to an unusually high volume of other Commission proceedings that many of the parties are involved in that are scheduled for a hearing or will be scheduled for a hearing in the coming months. This, they explained, makes it nearly

⁹ § 40-6-109.5(4), C.R.S.

¹⁰ Email with Parties at 1-3.

¹¹ Decision No. R23-0582-I at 4.

¹² *Id.* at 3

impossible to identify hearing dates for this Proceeding that could accommodate a 250-day deadline for a final Commission decision to issue. Examples of such Proceedings include but are not limited to Proceeding Nos.: 23A-0244E (October 23, 24, and 26, 2023 evidentiary hearing); 22A-0563E (November 7 and 9, 2023 evidentiary hearing); 23A-0330E (November 16, 17, and 20, 2023 evidentiary hearing); 23AL-0325G (November 20, 2023 evidentiary hearing); 23AL-0231G (November 28, 29, 30 and December 1, 2023 evidentiary hearing); 23AL-0243E (December 11 to 19, 2023 evidentiary hearing); 23A-0357E (January 8 and 9, 2024 evidentiary hearing); and 23A-0242E (January 10-12, 16-19, and 22-24 evidentiary hearing). The ALJ's calendar is likewise extremely full for many months to come.

21. The ALJ finds that the extraordinary conditions provision in § 40-6-109.5(4), C.R.S., is not intended to apply to ordinary circumstances where the Commission and parties are simply busy. But, as is the case here, where the volume of hearings (and related deadlines) makes it nearly impossible to schedule an evidentiary hearing; establish deadlines that the parties can meet; allow the parties to fully develop the record and conduct discovery; and provide enough time for the Commission to issue a final decision within the 250-day deadline in § 40-6-109.5(2), C.R.S., this rises to the level of extraordinary conditions, as contemplated under § 40-6-109.5(4), C.R.S. For all these reasons, during the prehearing conference, the ALJ found that extraordinary conditions exist justifying an additional 130-day extension of the statutory deadline for a final Commission decision, per § 40-6-109.5(4), C.R.S. As such, the deadline for a final Commission decision is extended by 130-days to August 23, 2024, per § 40-6-109.5(4), C.R.S.

C. Procedural Schedule and Evidentiary Hearing

22. During the prehearing conference, the parties agreed to the evidentiary hearing dates and procedural schedule outlined in the ordering paragraphs below.¹³

23. As to the manner in which the hearing will be held, only Public Service and Staff stated a preference, that is: Public Service prefers an in person or hybrid hearing and Staff prefers a fully remote hearing.¹⁴ Public Service noted that it has an out-of-state witness that would most likely need to appear remotely. Given this, and Public Service's statement that it plans to appear in person, the ALJ scheduled the hearing as a hybrid hearing.

24. At a hybrid hearing, any party or witness who wish to appear remotely may do so and those wishing to appear in person may do so. The only caveat is that at least one party must appear in person, or the hearing will be converted to a fully remote hearing. To this end, the parties are required to confer with each other to determine who will appear for the hearing in person. If this conferral results in the parties concluding that no one plans to appear in person, Public Service will be required to must make a filing indicating that no party will appear in person. If this happens, the hearing will be converted to a fully remote hearing.

25. To ensure an orderly hearing, the ALJ will require that the parties' Joint Witness Examination Matrix identify whether witnesses will appear remotely or in person.

¹³ The exception to this is that Staff asked for four weeks to file a Proposed Recommended Decision; the ALJ denied this request.

¹⁴ Staff objected to Public Service witnesses traveling to Denver to appear for the hearing in person, noting that ultimately, ratepayers are typically saddled with this expense when the Company seeks to recover expenses associated with litigating before the Commission. Public Service objected, noting that it is not seeking to recover such costs in this Proceeding, and that this argument is therefore irrelevant and inappropriate. The ALJ noted that given that litigation cost recovery is not at issue here, this is not the forum to raise this issue, but that Staff could raise the issue, if it so chooses, in an appropriate proceeding in which Public Service seeks to recover such costs. The ALJ also noted that Public Service had already stated its intent for its out-of-state witness to appear remotely, and thus, Staff's concerns may not be realized. Should Public Service modify its position here and ask to recover the costs associated with litigating this Proceeding in this Proceeding, Staff may raise its argument or present evidence on this issue here.

26. Because the hearing will accommodate remote participation, all documentary evidence will be presented electronically using a spreadsheet with hyperlinks to the parties' exhibits as they appear in the administrative record. That spreadsheet will be distributed to the parties before the hearing so that the parties may review it and confirm that it includes the exhibits they intend to offer into evidence. To ensure that the spreadsheet can be created, distributed, and reviewed before the hearing, the ALJ clarifies that the deadline for non- testimonial hearing exhibits is the final date for exhibits to be included in the spreadsheet.

27. Attachment A hereto includes important technical information and requirements to facilitate accommodating remote hearing participation. Persons wishing to observe but not participate in the hearing are encouraged to observe the hearing via the Commission's webcast, rather than join the Zoom hearing.¹⁵ This will help minimize background noise and avoid issues that may arise should the ALJ need to hold confidential or highly confidential hearing session.

28. Attachment B includes information and requirements to facilitate electronic evidentiary presentations at the hearing. Many requirements in Attachment B apply to formatting, marking, and filing exhibits, and are critical to ensure a smooth evidentiary presentation. The ALJ has observed parties in other proceedings repeatedly failing to comply with these formatting, marking, and filing requirements. This has resulted in a tremendous waste of resources—both by Commission support staff, who have been forced to carefully review each filed exhibit and contact parties to point out errors—and by parties who have to reformat and refile exhibits. It has also created unnecessary confusion as to which exhibits will be offered into evidence, particularly when

¹⁵ Parties wishing to observe the hearing via webcast may do so by going to the following link: <https://puc.colorado.gov/webcasts> and selecting the assigned hearing room's webcast. The Commission's public calendar will include information on the assigned hearing room and may be found at: <https://puc.colorado.gov/>, under the "Calendar of Events."

parties incorrectly number their exhibits, fail to correctly mark revised exhibits, or fail to file a public version of confidential or highly confidential exhibits.

29. To minimize the potential that the hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the parties' counsel by email before the hearing, and the parties will be prohibited from distributing that information to anyone not participating in the hearing.¹⁶ Counsel and the parties are responsible for ensuring that their witnesses receive the Zoom information needed to join the hearing.

30. *The parties are on notice* that consistent with Commission practice, friendly cross-examination will not be permitted during the evidentiary hearing.

III. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion and findings, the deadline for a final Commission decision to issue in this Proceeding is extended by a total of 280 days to August 23, 2024, per § 40-6-109.5(1) and (4), C.R.S.

2. As discussed, the Trial Staff of the Colorado Public Utilities Commission (Staff) is acknowledged as a party of right to this Proceeding. The Motions seeking to permissively intervene filed by Colorado Energy Consumers (CEC), the City of Boulder (Boulder), the City and County of Denver (Denver), and Energy Outreach Colorado (EOC) are granted. The Motion for Late-Filed Intervention by Right filed the Office of the Utility Consumer Advocate (UCA) is granted. Based

¹⁶ Approximately one week before the hearing, counsel will receive an email with information needed to join the hearing at the email addresses on file with the Commission for this proceeding. Counsel must ensure that the Commission has their most current email address.

on the foregoing, in addition to Public Service Company of Colorado (Public Service), the parties to this Proceeding are Staff, CEC, Boulder, Denver, EOC and the UCA.

3. A hybrid evidentiary hearing on the above-captioned Application is scheduled as follows:

DATES: April 2, 3, and 4, 2024

TIMES: 9:00 a.m. each day

PLACE: In-person: Commission Hearing Room, 1560 Broadway, Suite 250,
Denver, Colorado 80202

or

By video-conference using Zoom.

4. The parties are responsible for sharing the link, meeting ID code, and passcode with witnesses and others participating in the hearing remotely. Participants in the hearing may not distribute the link, meeting ID code, and passcode to anyone not participating in the hearing.

5. All parties must comply with the requirements in Attachments A and B to this Decision, which are incorporated into this Decision.

6. Non-participants in the evidentiary hearing may observe the hearing live through the Commission's webcast for the Hearing Room assigned for each of the above hearing dates, which may be accessed at this link: <https://puc.colorado.gov/webcasts>.

7. **Answer Testimony Deadline.** Interveners' answer testimony must be filed and served by January 12, 2024.

8. **Rebuttal and Cross-Answer Testimony Deadline.** Public Service's rebuttal testimony, and Interveners' cross-answer testimony must be filed and served by February 27, 2024.

9. **Deadline for Stipulations and Settlement Agreements.** The parties must file and serve any stipulations and settlement agreements by March 13, 2024.

10. **Deadline for Settlement Testimony.** By March 20, 2024, the parties must file and serve testimony in support of or in response to any settlement agreement that is filed.

11. **Corrections, Modifications, and Amendments to Testimonial Exhibits.**

a. To allow enough time for staff to create and circulate the hyperlinked spreadsheet that will be used during the hearing to present exhibits, the parties must file and serve any corrected, modified, or amended testimonial exhibits and attachments thereto (*i.e.*, corrections to answer, rebuttal, and cross-answer testimony and attachments) by March 20, 2024. It is the parties' responsibility to review the hyperlinked spreadsheet that will be used during the hearing to present exhibits to ensure that it correctly includes all the exhibits that the parties intend to offer into evidence during the hearing.

b. The parties may make corrections to testimonial exhibits and attachments thereto without filing a motion seeking leave to do so. Corrections include minor changes, such as fixing typographical or formatting errors. Corrections do not include material or substantive changes. Material or substantive changes to a testimonial hearing exhibit or attachment thereto amount to amending or modifying such documents. Any party wishing to amend or modify a testimonial exhibit or attachment thereto must file a motion establishing good cause; such a motion must be filed as soon as the party becomes aware of the need to amend or modify the filing. The parties must confer with each other prior to filing such a motion. Unreasonable delay in filing such a motion is grounds to deny the motion.

12. **Deadline for Non-Testimonial Hearing Exhibits.** By March 20, 2024, the parties must file and serve any non-testimonial hearing exhibits that they plan to offer into evidence (*i.e.*,

exhibits not already filed per other deadlines). The parties are not required to pre-file and serve hearing exhibits which may be used solely for impeachment, to refresh recollection, or for rebuttal. *The parties are on notice* that if they do not prefile an exhibit for any of these reasons, they must establish at hearing that the exhibit is being used for impeachment or to refresh recollection consistent with the requirements of Rules 612 and 613 of the Colorado Rules of Evidence, or for rebuttal. Any party may use any other party's hearing exhibits during the course of the hearing and should not file them separately. March 20, 2024 is also the deadline to file *final versions of all exhibits*, as referenced in Attachment B hereto. Such filings must comply with the specific requirements in Attachment B.

13. **Deadlines for Prehearing Motions and Responses Thereto.** The parties must file and serve any prehearing motions by March 22, 2024; responses to prehearing motions must be filed by March 29, 2024.

14. **Deadline to Report if No Party Will Appear in Person.** The parties must confer with each other to determine who will appear for the hearing in person. If parties conclude that none of them will appear in person, Public Service must make a filing on or by March 25, 2024 indicating that no party will appear in person. No such filing is necessary if at least one party will appear in person for the evidentiary hearing.

15. **Deadline for Hearing Exhibit and Witness Lists.** By March 26, 2024, the parties must file and serve complete exhibit and witness lists. Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information. Exhibit lists must identify the hearing exhibit number, the full title of each hearing exhibit, and include a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing. Describing an exhibit solely by identifying the exhibit number **does not meet** this

requirement (*e.g.*, describing it as “Hearing Exhibit 100” without information as to substantive nature or content of the exhibit).

16. **Deadline for Joint Witness Examination Matrix.** By March 28, 2024, the parties must file a joint witness examination matrix listing all the witnesses the parties anticipate will testify at the hearing, whether the witness will testify in person or remotely, and the anticipated amount of time each party will use to examine the witnesses. To the extent practicable, the witnesses should be listed in the order in which they will be called. The parties also must assume that the Administrative Law Judge will use some time to examine witnesses.

17. **Deadline for Proposed Recommended Decision.** In lieu of Statements of Position, the parties may submit written Proposed Recommended Decisions. Any party wishing to do so must file their Proposed Recommended Decision by April 22, 2024.

18. **Hearing Exhibit Number Block Assignments.** In order to efficiently organize exhibits that will be presented during the evidentiary hearing, all parties must use a unified numbering system for all hearing exhibits, consistent with the directions in Attachment B, using hearing exhibits within their assigned exhibit number blocks. The parties are assigned the following hearing exhibit numbers:

Party	Assigned Hearing Exhibit Numbers
Public Service	100 to 299
Staff	300 to 399
CEC	400 to 499
Boulder	500 to 599
Denver	600 to 699
EOC	700 to 799
UCA	800 to 899

19. Any party requiring more exhibit numbers than assigned may use the same numerical sequence of exhibit numbers assigned to them, but in the 1000 range (*e.g.*, Public Service will use hearing exhibit numbers 1100-1299; Staff will use hearing exhibit numbers 1300-1399, *etc.*). Hearing Exhibit 900 is reserved for the hyperlinked spreadsheet that will be used during the hearing to present evidence.

20. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director