

Decision No. C24-0145-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0392EG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS 2024-2028 CLEAN HEAT PLAN.

**INTERIM COMMISSION DECISION
GRANTING UNOPPOSED MOTION FOR LEAVE TO
SUBMIT ORAL TESTIMONY AT HEARING**

Mailed Date: March 6, 2024

Adopted Date: March 6, 2024

I. BY THE COMMISSION

A. Statement

1. On August 1, 2023, Public Service Company of Colorado (Public Service or Company) filed its Clean Heat Plan Application (Application), which requests that the Commission approve the Company’s proposed 2024-2028 Clean Heat Plan (Clean Heat Plan).

2. On March 4, 2024, Natural Resources Defense Council and Sierra Club (the Conservation Coalition), Southwest Energy Efficiency Project (SWEEP), and Western Resource Advocates (WRA) filed a motion titled “Unopposed Motion for Leave to Submit Oral Direct Testimony Regarding the Company’s New Flex Portfolio” (Motion).

3. Through this Decision, we grant the Motion and adopt corresponding adjustments to the schedule and process for the evidentiary hearing in this matter.

B. Background

4. By Decision No. C23-0746-I, issued November 3, 2023, the Commission set the Application for hearing before the Commission *en banc*, required the parties to confer on a procedural schedule, and directed Public Service to file a proposed procedural schedule.

5. By Decision No. C23-0801-I, issued December 4, 2023, the Commission established the procedural schedule for this Proceeding. The procedural schedule set February 26, 2024, as the deadline for parties to file rebuttal and cross-answer testimony. The procedural schedule set March 8, 2024, as the deadline for parties to submit the cross-examination matrix setting forth the proposed witnesses order and scheduled cross for the hearing to be held March 11-15 and 18-19, 2024.

6. On February 26, 2024, Public Service filed rebuttal testimony of Company witness Jack Ihle.¹ Within Mr. Ihle's testimony, the Company proposed a new portfolio called the "Flex Portfolio."² Among other changes, the Flex Portfolio proposes a different procedure for determining portions of the portfolio for future years of this Clean Heat Plan. In sum, Public Service proposes to use a non-litigated process in 2026 to decide whether and how to allocate \$119 million of the proposed portfolio budget for the remaining plan years.

7. Through their Motion, the Conservation Coalition, SWEEP, and WRA request that the Commission allow each intervenor to designate one of its witnesses to provide brief oral testimony concerning the Flex Portfolio during the evidentiary hearing. They contend the Flex Portfolio raises several issues that intervenors have not yet been able to address and urge that granting the Motion will provide an appropriate opportunity for intervenors to address these issues

¹ Hrg. Ex. 116.

² *Id.* at 92-105.

and will aid the record before the Commission. They contend that affording intervenors this opportunity strikes the right balance between the Company's rights regarding rebuttal testimony and intervenors' rights to respond to Company proposals. They claim that considerations of fairness and due process weigh in favor of allowing this limited opportunity to respond.

8. Specifically, the Motion proposes the Commission allow (but not require) each intervenor to designate one of its witnesses to provide oral testimony limited solely to responding to the Flex Portfolio. Each witness would be allowed a minimum of five and a maximum of ten minutes of oral testimony. The Motion requests the Commission modify the hearing procedures to retain the typical order of witnesses (*i.e.*, the Company witnesses, followed by intervenor witnesses) but allow at the conclusion of intervenor testimony for Public Service to call up to 2 witnesses, for a total of not more than 25 minutes, solely for the purpose of responding to intervenor witness' live oral testimony regarding the Flex Portfolio.

9. The movants state the Motion is unopposed. They clarify; however, that although Public Service does not oppose the Motion it disagrees with the movants' characterization of the Flex Portfolio, which the Company believes is responsive to the intervenors' Answer Testimony and consistent with the portfolios in the record and processes the Commission has used in the past.

C. Findings and Conclusions

10. The Commission finds good cause to grant the Motion. In this instance, we find that allowing for limited oral answer testimony from intervenors at hearing will strike the right balance between procedural efficiency and ensuring an adequate record before the Commission.

11. While we agree with the movants that an opportunity for limited oral answer testimony is appropriate, we urge the parties to be judicious with their available hearing time and to refrain from duplicate or repetitive testimony or cross examination.

12. Accordingly, we adopt the following modifications to the Commission's usual practices to apply to the evidentiary hearing scheduled for March 11-15, 2024, and March 18-19, 2024. First, the order of witness presentation will remain as reflected in the cross-examination matrix to be filed by Public Service no later than March 8, 2024 (*e.g.*, Company witnesses, followed by intervenor witnesses). Second, each intervenor may designate one of its witnesses to provide oral answer testimony, of not more than ten minutes, for the sole purpose of responding to the Flex Portfolio. We encourage parties with similar positions to combine their testimony time. At the conclusion of the scheduled intervenor testimony, the Company may call up to two of its witnesses for a total of not more than 25 minutes, solely for the purpose of responding to intervenor witness' live oral testimony regarding the Flex Portfolio. The Commission will consider limited requests for additional cross of the Company's Flex Portfolio response witnesses through motion at hearing, though we anticipate little, if any, need for further examination after the Company's opportunity for oral rebuttal on the Flex Portfolio.

13. To better plan for the hearing, we ask that parties identify on the cross-examination matrix their witness designated to provide this oral testimony and the estimated total time for their testimony.

II. ORDER

A. It Is Ordered That:

1. The Unopposed Motion for Leave to Submit Oral Direct Testimony Regarding the Company's New Flex Portfolio, filed by Natural Resources Defense Council and Sierra Club, Southwest Energy Efficiency Project, and Western Resource Advocates on March 4, 2024, is granted, consistent with the discussion above.

2. Any party who plans to designate a witness to provide oral answer testimony shall indicate as such on the cross-examination matrix to be filed no later than March 8, 2024.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 6, 2024.**

(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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Commissioners