

Decision No. C24-0716-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0296E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2025-2027 WILDFIRE MITIGATION PLAN, WILDFIRE MITIGATION ADJUSTMENT, PUBLIC SAFETY POWER SHUTOFF PLAN, AND THE RECOVERY OF ITS 2023 WILDFIRE MITIGATION PLAN DEFERRAL.

**INTERIM COMMISSION DECISION EXTENDING
§ 40-6-109.5 STATUTORY DEADLINE BY AN
ADDITIONAL 130 DAYS**

Issued Date: October 3, 2024
Adopted Date: October 1, 2024

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I. BY THE COMMISSION**A. Statement**

1. By this Decision, the Commission finds that extraordinary conditions exist in this Proceeding and extends the statutory deadline within which to issue a decision by an additional 130 days pursuant to § 40-6-109.5(4), C.R.S.

B. Background

2. On June 27, 2024, Public Service Company of Colorado (“Public Service” or the “Company”) filed an application for approval of its 2025-2027 Wildfire Mitigation Plan (“WMP”) and Public Safety Power Shutoff (“PSPS”) Plan (“Application”). Public Service’s Application is sweeping in its proposed costs and proposed actions to reduce and respond to wildfire risk within its service territory. It intertwines two distinct plans which reflect not only capital investments to reduce the risk of ignition from utility infrastructure, but also the decision making and communications protocols Public Service would use to proactively inform emergency operations staff and impacted customers in the event of severe weather conditions that present an elevated risk of wildfires caused by Company equipment.

3. By Decision No. C24-0575-I, issued on August 12, 2024, the Commission deemed the Application complete, set it for hearing *en banc*, and acknowledged or granted certain interventions.

4. On August 19, 2024, Public Service filed a Notice of Conferral and Unopposed Motion to Approve Consensus Procedural Schedule (“Procedural Schedule Motion”). The proposed schedule is intended to meet the requirements of Decision No. C24-0575-I; however, the Company states that it is not proposing to waive any statutory timelines to accommodate the

schedule, explaining instead that it was designed to comply with the deadlines specified in subsections (1) and (2) in § 40-6-109.5, C.R.S.

5. On September 23, 2024, the Commission issued Decision No. C24-0678-I which, among other things, scheduled a prehearing conference for October 1, 2024, and provided notice, as required by § 40-6-109.5(4), C.R.S., that the Commission would be deciding whether to make a finding of extraordinary conditions at the prehearing conference.

6. On September 30, 2023, Public Service filed a Notice of Party Conferral Positions on Procedural Schedule Options (“Notice”) in which it explained the Company opposes a finding of extraordinary conditions and extension of time. The Notice nevertheless presented three alternative procedural schedule options. The first option proposed an evidentiary hearing that would conclude just before April 19, 2025, or 250 days after the day the Application was deemed complete by the Commission, with closing statements of position filed in May 2025. The second option proposed an evidentiary hearing that would begin in May 2025. The third option would divide the case into two phases, with one decision rendered prior to April 19, 2025, and a second decision following a hearing in August 2025. The Notice also included a request by Public Service to pause discovery propounded on it until late November.

7. Concurrent with Public Service’s Notice, Mr. Robert Kenney, President of Public Service , filed a letter with the Commission in which he expresses his concerns regarding a finding of extraordinary conditions. Mr. Kenney maintains any delays could hinder effective and timely execution of the measures proposed in the Company’s Application and he contends timely approval of the WMP is essential since wildfire risks are increasing and timely action is required to mitigate those risks. Mr. Kenney additionally maintains a delay in the schedule will disrupt any

coordination with federal, state and local agencies by continuing uncertainty of the Company's proposals. Mr. Kenney also claims that delaying the schedule will create uncertainties in resource planning and allocation, leading to increased costs and reduced effectiveness. Finally, Mr. Kenney alleges that a delay in approving the WMP will signal a lack of urgency or concern from the Commission to rating agencies and investors

C. Findings and Conclusion

1. Extraordinary Conditions

8. As discussed at the prehearing conference, we find this Proceeding presents extraordinary conditions warranting an extension of the statutory deadline in which to render a decision by an additional 130 days pursuant to § 40-6-109.5(4), C.R.S.

9. As set out in Decision No. C24-0687-I, compared to the 2020 WMP, the Company's 2025-2027 WMP has doubled the geographic areas of focus; quadrupled the proposed budget for capital investments; expanded the categories of work and types of mitigation activities; and proposed hiring new staff and incorporating new internal business units. For some activities that were once pilots, such as the Enhanced Powerline Safety Settings, Public Service proposes to roll them out on a large scale. Moreover, Public Service seeks to fund this work through a new, concurrent cost recovery mechanism.

10. The Application filing involves extraordinary levels of complexity. The Company's cost recovery proposals have implications for other pending and anticipated applications, as well as raising questions about how federal, state, local, and ratepayer funding can be interwoven and leveraged to reduce wildfire risk overall. Moreover, the Company's Application functionally includes two ensconced but distinct efforts: the 2025-2027 WMP and the PSPS Plan. The two

plans will invoke different questions about the roles of local, state, and federal entities in cost recovery and communications; different approaches to balancing effective regulation with utility managerial discretion; and different measures of successful implementation.

11. Public Service's request for approval of a PSPS Plan may create unanticipated new risks as the Commission moves forward. The Commission must be careful and deliberate in its consideration of utility proposals so its decisions do not result in standards that may be challenging to implement and may not serve changing customer needs.

12. Colorado has experienced several devastating wildfires in the last few years resulting in significant loss of life and extraordinary property loss. In addition, Public Service conducted a PSPS event in April 2024, which , was found to be lacking in communication and coordination in Proceeding No. 24M-0173E. Consequently, a fulsome record is imperative upon which the Commission can make well-reasoned and well-informed decisions.

13. The participation of entities with unique subject matter expertise, such as federal and state agencies, local Offices of Emergency Management, local first responders, local business leaders and residential customers, is imperative, as their input will provide the basis for a determination that what Public Service proposes in its WMP and PSPS Plan is necessary, sound, and dovetails into the needs of those parties as seamlessly as possible. We have committed to developing the most complete record possible for this Proceeding and to enhancing our understanding of the real-world implications of the proposals put before us through gathered information, public comments and testimony.

14. Based on this, we have set several goals we aim to utilize to help guide proactive engagement by parties and other stakeholders in what is clearly a highly complex proceeding.

Those goals include accomplishing a better understanding of: 1) the interrelationships of federal, state, and local agencies, and private or nonprofit sector partners, in wildfire mitigation; 2) the interrelationships of federal, state, and local agencies in emergency management preparedness and response to understand how Public Service can best leverage existing resources, and how the Commission can efficiently support appropriate collaboration and coordination; 3) whether and how Public Service can leverage funding resources and opportunities available across federal, state, and local levels; and 4) whether and how the Company is leveraging existing situational awareness tools, including risk tools, maps, and cameras, and where permitted to make such additional investments, so it is able to provide system-wide benefits through resource sharing.

15. Considering those priorities, we emphasized in Decision No. C24-0687-I, three circumstances emerge as reasons for finding extraordinary conditions exist in this proceeding. First, the complexity of the WMP and PSPS Plan proceedings standing alone are daunting; however, when combined into a single proceeding as Public Service has done here, the scope of the proceeding is truly expansive. Second, the size of the WMP investments and the complexity of the unique cost recovery mechanisms proposed by the Company will require expending considerable time and resources to completely analyze. Third, and most importantly, the need for additional process which will include an informational session within the adjudicatory process by which the Commission can place into the record, critical information and evidence from representatives of appropriate federal and state agencies, local offices of emergency management, first responders, local business leaders, and residential customers, especially those dependent on durable medical equipment. This information is critical for the Commission to understand the efficacy of what Public Service proposes in context with the needs of those outside parties.

These issues, taken together, clearly demonstrate the complexity of this proceeding and the need to issue a decision that allows for appropriate investment in WMP and the development of a PSPS that protect the lives and property of the people of Colorado.

16. This pre-hearing conference was convened for the purpose of determining whether extraordinary conditions exist in order to further extend the deadline for the Commission to issue a final decision in this matter as provided under § 40-6-109.5(4), C.R.S. Under that statutory provision notice must be provided, as well as a hearing at which the existence of extraordinary conditions is established. Upon a finding of extraordinary conditions, the Commission may extend the time limits to issue a decision of 250 days specified in subsections (1) and (2) of § 40-6-109.5 for a period not to exceed an additional 130 days. The Commission provided the requisite notice by its Interim Decision No. C24-0687-I, page 15, Paragraphs 41 through 43, issued on September 23, 2024, subsequent to its discussion at the September 18, 2024, Commissioners Weekly Meeting.

17. Section 40-6-019.5(4), C.R.S., does not specifically delineate what circumstances may constitute extraordinary conditions. Rather, it leaves it to the Commission's sound discretion to make that determination. What constitutes extraordinary conditions is determined on a case-by-case basis in the context of the proceeding in which the determination is made.

18. While § 40-6-109.5, C.R.S., also provides that the 250-day time limit "specified in subsections (1) and (2) may be waived by the applicant pursuant to subsection (3), and if so waived, the 250 day time limit is not be binding on the commission," Public Service has previously represented, and again states in its Notice that its "... proposals are intended to follow the guidance made by the Commission in Decision No. C24-0687-I, even though the Company does not support

an extension of this proceeding beyond the schedule included in its Procedural Schedule Motion filed on August 29, 2024.” During the course of the pre-hearing conference, Public Service stated on three occasions, in response to questioning by Chairman Blank, it would not waive the 250-day time limit.

19. In consideration of the scope, complexity, cost, and importance of the Company’s Application we find this Proceeding presents extraordinary conditions requiring us to extend the statutory deadline in which to file a Commission decision by an additional 130 days pursuant to § 40-6-109.5(4), C.R.S. This extension of time will help the Commission and the parties thoroughly develop and consider a fulsome record and will help the Commission achieve its stated goals in this Proceeding.

2. Public Service Notice of Party Conferral

20. As indicated above, Public Service filed a Notice of Party Conferral. with three options tied to a Commission finding of extraordinary conditions. The first proposal provides for answer testimony, rebuttal and cross-answer testimony to be filed two months later than the proposed procedural schedule the parties set forth earlier.¹ The proposal also includes a nine-day evidentiary hearing scheduled for April 2025 and Closing Statements of Position to be filed on May 6, 2025, which exceeds the 250-day deadline by more than two weeks.

21. The Company’s second proposal sets a nine-day hearing beginning on May 5, 2025, and moves the deadlines for answer testimony, rebuttal and cross-answer testimony three months from the parties’ original proposed procedural schedule. This proposal exceeds the 250-day statutory time limit by a month and a half.

¹ Public Service Company Notice of Conferral and Unopposed Motion to Approve Consensus Procedural Schedule and Request for Waiver of Response Time, filed August 29, 2024.

22. Public Services' third option proposes the Commission bifurcate the WMP and the PSPS Plan into two phases. The Company's WMP investments, budgets, and cost recovery proposals are heard and decided within the original statutory deadline, while subsequent litigation would address the PSPS Plan and related communication and engagement efforts. The second phase of the bifurcated proceeding proposes a four-day hearing on the PSPS Plan beginning on August 12, 2025, and Closing Statements of Position due on September 9, 2025. This proposal exceeds the 250-day deadline by nearly six months.

23. We find the Company's proposals flawed for several reasons. While the Company puts forth procedural schedule proposals for our consideration, two of those proposals exceed the April 19, 2025, deadline. However, Public Service adamantly refuses to waive that deadline to accommodate these proposals. While we find the May hearing date option palatable with several modifications, without the Company's cooperation to waive the statutory deadline, we must develop alternatives to that proposal.

24. We also hold concerns regarding the Company's bifurcation proposal. We find it deprioritizes the PSPS Plan until the fall of 2025, delaying any real discussion or conclusions on a system already determined to be flawed in a parallel proceeding. We also have concerns with Public Service's proposal to delay the technical conference for purposes of demonstrating the Company's Technosylva software and refined, public-facing outage map, software and tools which we find to be among the most important components of the Application. We were surprised to hear at this late date from the Company the benefits it sees to delaying a the technical conference in the Proceeding and intervenors position that there is merit to filing answer testimony following its presentation. These significant changes were not anticipated by the Commission and therefore we

require the parties to elaborate on these new priorities. Additional information from the Company and the intervening parties will help drive a final procedural schedule.

25. We therefore require Public Service to confer with the parties to develop a new proposed procedural schedule, with a preference for hearing dates in May 2025. In addition, we require the parties to provide a window of time for the Commission to convene within this Proceeding a Commissioners' Information Meeting to hear from state agencies with expertise in wildfire and emergency events and to receive additional comments from local OEMs and potentially impacted customers from the implementation of the PSPS Plan prior to the filing deadline for the Company's rebuttal testimony, because this information gathering is a critical portion of the procedural schedule as explained in Decision No. C24-0687-I.

26. We are sympathetic to the concerns raised by the parties and Public Service regarding extending the proceeding an additional 130-days. While we expected the Company to waive the 250-day deadline on its own accord, given that the proposals in the Notice easily exceeded that timeline, we nonetheless move forward with our finding of extraordinary conditions. We find this extension will provide the parties and the Commission with the time necessary to fully analyze and address the highly complex and sweeping Application. Rest assured however, we will endeavor to complete the Proceeding as soon as possible ahead of an August 28, 2025, deadline.

II. ORDER

A. It Is Ordered That:

1. The statutory deadline for the Commission to issue a decision shall be extended 130 additional days to August 28, 2025, consistent with the discussion above.

2. The Company shall confer with the parties to this Proceeding and shall submit a proposed procedural schedule consistent with this Decision by October 4, 2024.

3. This Decision is effective on its Issued Date.

**B. ADOPTED IN PREHEARING CONFERENCE
October 1, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners