

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 23A-0494E

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IN THE MATTER OF PUBLIC SERVICE COMPANY'S APPLICATION FOR A  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE FORM ENERGY  
LONG DURATION BATTERY PROJECT AT COMANCHE GENERATING STATION.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
CONOR F. FARLEY  
EXTENDING STATUTORY DEADLINE, ADOPTING  
PROCEDURAL SCHEDULE, SCHEDULING HYBRID  
HEARING, AND PROVIDING INSTRUCTIONS  
CONCERNING EXHIBITS, AND FOR PARTICIPATING IN  
REMOTE HEARING**

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Mailed Date: January 9, 2024

**I. STATEMENT**

**A. Background**

1. On October 4, 2023, Public Service Company of Colorado (Public Service or Xcel Energy) filed the Verified Application (Application) described above and a Motion for Extraordinary Protection.

2. October 5, 2023, the Commission issued a notice of the Application.

3. On October 10, 2023, and November 6, 2023, Holy Cross Electric Association (Holy Cross) and Colorado Energy Consumers (CEC) filed Motions to Permissively Intervene, respectively.

4. On November 1, 2023, the Colorado Solar and Storage Association (COSSA) and the Solar Energy Industries Association (SEIA) filed a Joint Motion to Intervene.

5. On November 3, 2023, and November 13, 2023, the Office of the Utility Consumer Advocate (UCA) and Trial Staff (Staff) of the Commission filed Notices of Intervention by Right, respectively.

6. On November 21, 2023, the Application was automatically deemed complete pursuant to Rule 1303(c)(IV).<sup>1</sup>

7. On November 22, 2023, the Commission referred the proceeding to an Administrative Law Judge (ALJ) by minute entry. The proceeding was subsequently assigned to the undersigned ALJ.

8. On December 19, 2023, the undersigned ALJ issued Decision No. R23-0845-I that scheduled a remote prehearing conference for January 5, 2024, and required the parties to confer about a procedural schedule and Public Service to file a report of the conferral by January 3, 2024.

9. On January 2, 2024, Public Service filed the Conferral Report. In it, Public Service reported that the parties had agreed to the following procedural schedule (Consensus Schedule):

<u>Event</u>	<u>Deadline</u>
Answer Testimony	February 9, 2024
Rebuttal/Cross-Answer Testimony	March 8, 2024
Prehearing Motions	March 13, 2024
Responses to Prehearing Motions	March 18, 2024
Corrections to Pre-Filed Testimony & Exhibits	March 20, 2024
Settlement Agreement(s) Stipulations	March 22, 2024
Settlement Testimony Cross-Examination Matrix	March 27, 2024
Hearing	April 3-4, 2024
Statements of Position	April 25, 2024

<sup>1</sup> 4 Code of Colorado Regulations (CCR) 723-1.

Public Service also reported that the parties agree that: (a) Commission Rule 1405 will govern discovery; and (b) the hearing should be conducted as a hybrid hearing.

**B. Extension of Deadline**

10. As stated in the Notice, because Public Service filed testimony with the Application, the Commission is required by § 40-6-109.5(1), C.R.S., to issue its decision within 120 days of the Application being deemed complete by the Commission. Thus, the Commission's decision in this proceeding must issue by March 20, 2024. However, § 40-6-109.5(1), C.R.S., also provides that the Commission may, in its discretion and by a separate decision, extend the time for a decision by an additional 130 days.

11. Here, considering the Consensus Schedule proposed by the parties, the time available, the time necessary to address other pending matters, and the need for the Commission to have adequate time to deliberate on the issues presented in this matter, it is not feasible for a final Commission decision to issue by March 20, 2024. Accordingly, pursuant to § 40-6-109.5(1), C.R.S., it is necessary to extend the deadline for an additional 130 days to July 28, 2024.

**C. Pre-and Post-Hearing Schedule**

12. The Consensus Schedule and the parties' proposal to shorten discovery response time as described above will be accepted. A deadline of March 27, 2024, shall be established for Public Service to file a Notice identifying the parties and witnesses who will participate in the hearing in-person or remotely. For the hearing to remain a hybrid hearing, at least one party or witness must appear in person; otherwise, the hearing will be converted to a fully remote hearing. The schedule for the proceeding is as follows:

<u>Event</u>	<u>Deadline</u>
Answer Testimony	February 9, 2024
Rebuttal/Cross-Answer Testimony	March 8, 2024
Prehearing Motions	March 13, 2024
Responses to Prehearing Motions	March 18, 2024
Corrections to Pre-Filed Testimony & Exhibits	March 20, 2024
Settlement Agreement(s) Stipulations	March 22, 2024
Settlement Testimony Cross-Examination Matrix Notice of Parties'/Witnesses' Remote or In-Person Participation	March 27, 2024
Hearing	April 3-4, 2024
Statements of Position	April 25, 2024

13. In order to efficiently organize the numbering and preparation of exhibits for the hearing, all parties must use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- Public Service is assigned hearing exhibit numbers 100 to 199;
- Staff is assigned hearing exhibit numbers 200 to 299;
- UCA is assigned hearing exhibit numbers 300 to 399;
- Holy Cross and CEC are assigned hearing exhibit numbers 400 to 499; and
- COSSA and SEIA are assigned hearing exhibit numbers 500 to 599.

#### **D. Hybrid Evidentiary Hearing**

14. As agreed to by the parties, the evidentiary hearing shall be scheduled for April 3-4, 2024. Based on the input of the parties, the hearing will be conducted as a hybrid hearing. This Decision and Attachments A and B hereto provide critical information and instructions to facilitate holding the hybrid hearing, which all parties must follow.

15. To minimize the potential that the hybrid hearing may be disrupted by non-participants, the link, meeting ID code, and passcode to attend the hearing will be provided

to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

16. Attachment A to this Decision provides the information addressing how to use the Zoom platform for remotely participating in the hearing. Attachment B to this Decision outlines procedures and requirements for marking and formatting exhibits to facilitate the efficient and smooth electronic evidence presentations at the hybrid hearing. It is extremely important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

**E. Remote Prehearing Conference**

17. The Conferral Report comprehensively addresses the issues the ALJ intended to address at the remote prehearing conference. Accordingly, the remote prehearing conference scheduled for January 5, 2024, will be vacated.

**II. ORDER**

**A. It Is Ordered That:**

1. For the reasons stated above, the deadline for a Commission decision on the Application filed in this proceeding is extended to July 28, 2024.

2. The schedule stated in paragraph 12 above is adopted.

3. A hybrid hearing in this proceeding is scheduled as follows:

DATE: April 3, 2024

TIME: Following the completion of the Commissioners' Weekly Meeting to 5:00 p.m.

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

By video conference: using the Zoom web conferencing platform at a link to be provided to the participants by email.

DATE: April 4, 2024

TIME: 9:00 a.m. to 5:00 p.m.

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

By video conference: using the Zoom web conferencing  
platform at a link to be provided to the participants by email.<sup>2</sup>

4. The remote prehearing conference scheduled for January 5, 2024, at 1:30 p.m. is  
vacated.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,  
Director

<sup>2</sup> Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All participants are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.