

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0471E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO TO IMPLEMENT DELIVERY OF ONE-SECOND TIME-STAMPED ELECTRIC USAGE DATA.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
GRANTING MOTION TO MODIFY
PROCEDURAL SCHEDULE, AND GRANTING
REQUEST FOR WAIVER OF RESPONSE TIME**

Mailed Date: April 23, 2024

I. STATEMENT AND PROCEDURAL BACKGROUND

1. On September 22, 2023, Public Service Company of Colorado (Public Service or the Company) filed its verified application seeking approval from the Colorado Public Utilities Commission (Commission) “to deliver one-second time-stamped data through the Software Development Kit (SDK) established as a result of the Amended Advanced Grid Intelligence and Security (AGIS) Certification of Public Convenience and Necessity (CPCN).”¹ Public Service further requested that it be allowed “to defer incremental costs necessary to maintain SDK and provide technical support to third parties in a regulatory asset without carrying costs.”²

2. Contemporaneously with its Verified Application, the Company filed the direct testimony of Michael Pascucci, Public Service’s Director of Regulatory and Strategic Analysis;

¹ Verified Application of Public Service Company of Colorado, filed Sept. 22, 2023, p. 1.

² *Id.*

and Joel Miller, Public Service's Director of Product Strategy and Development, along with numerous exhibits.

3. On September 25, 2023, the Commission's Notice of Application Filed was sent to all interested persons and entities. The Notice stated that Public Service had filed direct testimony with its Verified Application and was seeking a Commission decision within 120 days of the Application being deemed complete.³

4. On October 17, 2023, the Colorado Office of the Utility Consumer Advocate (UCA) filed its Notice of Intervention of Right, Request for Hearing, and Entry of Appearances.

5. On October 25, 2023, the Trial Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing (Staff Intervention).

6. Finally, on October 25, 2023, Mission:data Coalition, Inc. (Mission:data) moved to permissively intervene in this Proceeding.

7. On November 1, 2023, the Commission deemed the Application complete and referred it by minute entry to an Administrative Law Judge (ALJ) for disposition. Subsequently, this Proceeding was assigned to the undersigned ALJ.

8. Decision No. R23-0828-I, issued December 11, 2023, granted Mission:data's motion to permissively intervene and acknowledged the intervention as of right asserted by Staff and the UCA. The parties to this Proceeding consequently are the Company, Staff, UCA, and Mission:data.

9. Decision No. R23-0828-I also invited the parties to confer and propose a procedural schedule to govern this Proceeding and to suggest dates and a format for an evidentiary hearing.

³ Notice of Application Filed, filed Sept. 25, 2023.

10. On December 22, 2023, counsel for Public Service, Steven Denman, informally contacted the undersigned ALJ to propose a procedural schedule to which all parties had agreed.

11. By Decision No. R24-0055-I, issued January 25, 2024, the undersigned ALJ approved and adopted the schedule proposed by the parties. The following procedural schedule is thus in place:

Answer Testimony	March 8, 2024
Rebuttal Testimony and Cross-Answer Testimony	April 12, 2024
Prehearing Motions Deadline	April 17, 2024
Stipulations and Settlement Agreements	April 18, 2024
Settlement Testimony (if matter settles) OR Corrections to Pre-filed Testimony and Exhibits	April 25, 2024
Cross-Examination Matrix	April 30, 2024
Evidentiary Hearing	May 2-3, 2024
Statements of Position	May 24, 2024

12. Decision No. R24-0055-I also scheduled an evidentiary hearing to be held May 2-3, 2024, and extended the statutory time period within which a final Commission decision must issue by the full extent permitted by § 40-6-109.5(4), C.R.S., or up to and including November 15, 2024.

13. The parties have adhered to this procedural schedule, with Staff, UCA, and Mission:data all filing Answer Testimony on March 8, 2024, and the Company filing its Rebuttal Testimony on April 12, 2024, contemporaneous with cross-answer testimony from Mission:data.

14. However, on April 18, 2024 — the deadline by which the parties were to file any stipulations or settlement agreements — Public Service filed an Unopposed Motion for Minor

Modifications of the Procedural Schedule and Request for Waiver of Response Time. Specifically, the Company requested “a short extension of three procedural dates” to allow it and the other parties additional time “to determine whether a settlement or stipulations are possible before the hearing and to finalize and agreement.”⁴

15. Specifically, Public Service requested that the time period for the following actions be modified:

- a) The deadline for filing Stipulations and Settlement Agreements be extended from April 18, 2024, to April 26, 2024;
- b) The deadline for filing Settlement Testimony (if the Proceeding settles) be extended from April 25, 2024, to April 30, 2024; and
- c) The deadline for filing Corrections to Pre-filed Testimony and Exhibits be extended from April 25, 2024, to April 30, 2024.

The remainder of the procedural schedule would be unchanged.

16. Public Services represents that “these short modifications to the procedural schedule will enhance the ability of the parties to explore settlement or stipulations, which will contribute to the efficiency of handling this proceeding.”⁵ The Company indicated that because the Commission “encourages settlement of contested proceedings,” it had established “good cause” for an extension of the above deadlines.

17. The undersigned ALJ agrees and therefore finds and concludes that Public Service has demonstrated good cause for the extension of the deadlines for the filing of Stipulations and Settlement Agreements, Settlement Testimony, and Corrections to Pre-Filed Testimony and Exhibits. Accordingly, the ALJ will extend those deadlines.

⁴ Unopposed Motion of Public Service Company of Colorado for Minor Modifications of the Procedural Schedule and Request for Waiver of Response Time (Unopposed Motion to Modify), p. 3, ¶ 4, filed Apr. 18, 2024.

⁵ *Id.* at p. 3, ¶ 5.

18. The ALJ observes, though, that it appears to be the parties' intent to preserve the May 2-3, 2024, evidentiary hearing dates. The undersigned ALJ notes that: although the proposed modifications to the procedural schedule accommodate the current hearing dates, the proposal will impose tight deadlines for the parties and the Commission to prepare for a hearing (should a hearing be necessary). Notably, an evidentiary hearing may be required if the parties fail in their efforts to settle this matter, fail to reach a unanimous settlement, or reach a settlement that raises critical issues that must be addressed by the Commission.

19. Furthermore, this matter involves questions not only of technology, but also of user experience, including the process by which customers are able to navigate websites and/or applications to authorize third parties to view or receive customer data. To ensure that any ensuing hearing is as efficient and productive as possible, the undersigned ALJ reminds and encourages the Company and the parties to be cognizant of the need to demonstrate (both through exhibits and as part of any settlement) the technical features being incorporated into the Company's SDK, including but not limited to, specifically, how customers of the Company might identify opportunities to engage third parties in data use and analysis and then initiate data transfers. The undersigned ALJ suggests that depending on the clarity of information provided through exhibits, it may be beneficial to conduct demonstrations of various software application features as part of any evidentiary hearing. Should this be necessary, specific direction on software demonstrations will be identified by a subsequent decision. Given the tight timeline between any potential settlement or stipulation and the evidentiary hearing, the undersigned ALJ may consider further procedural changes as necessary.

II. WAIVER OF RESPONSE TIME

20. Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, a responding party “shall have 14 days after service of the motion . . . in which to file a response.” Thus, under Rule 1400(b), any response to the Company’s Unopposed Motion to Modify is currently due on or before May 2, 2024.

21. However, Rule 1308(b), 4 CCR 723-1, permits the Commission to “shorten or waive response time to a motion upon motion of a party or on its own motion upon a finding that time is of the essence. . . . The Commission can act immediately where response time is waived and after expiration of the shortened response time.”

22. An unopposed motion such as this may be granted before expiration of the time within which to respond to the motion. *See* Rule 1400(a)(II), 4 CCR 723-1. As the Unopposed Motion to Modify is unopposed, the ALJ finds that waiving the response time to the Unopposed Motion to Modify will not prejudice any party. The ALJ will therefore waive response time to the Unopposed Motion to for Minor Modifications of the Procedural Schedule and Request for Waiver of Response Time.

III. ORDER**A. It Is Ordered That:**

1. The Unopposed Motion of Public Service Company of Colorado for Minor Modifications of the Procedural Schedule and Request for Waiver of Response Time, filed April 18, 2024, is granted.

2. The procedural schedule adopted By Decision No. R24-0055-I, issued January 25, 2024, is modified as follows:

Stipulations and Settlement Agreements	April 18, 2024 April 26, 2024
Settlement Testimony (if matter settles) OR Corrections to Pre-filed Testimony and Exhibits	April 25, 2024 April 30, 2024

3. All other deadlines set by the procedural schedule adopted by Decision No. R24-0055-I (including the evidentiary hearing scheduled for May 2-3, 2024), remain unchanged and in effect.

4. Response time to the Unopposed Motion for Minor Modifications of the Procedural Schedule and Request for Waiver of Response Time is waived.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director