

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
MODIFYING PROCEDURAL SCHEDULE, AND
VACATING AND RESCHEDULING EVIDENTIARY
HEARING**

Mailed Date: May 1, 2024

I. STATEMENT AND PROCEDURAL BACKGROUND¹

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).”² 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.”³

¹ This procedural history will be limited to that necessary to provide context for the issues addressed in this Decision.

² Verified Application of Public Service Company of Colorado, filed Sept. 22, 2023, p. 1.

³ *Id.*

2. On September 25, 2023, the Commission's Notice of Application Filed was sent to all interested persons and entities.

3. The Colorado Office of the Utility Consumer Advocate (UCA) and Trial Staff of the Colorado Public Utilities Commission (Staff) both timely intervened as of right in this Proceeding.

4. Mission:data Coalition, Inc.'s (Mission:data) motion to permissively intervene was granted by Decision No. R23-0828-I, issued December 11, 2023.

5. 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.

6. By Decision No. R24-0055-I, issued January 25, 2024, the undersigned ALJ approved and adopted the parties' proposed procedural schedule to govern this Proceeding. Decision No. R24-0055-I set a deadline of April 18, 2024, by which the parties were to submit any stipulations or settlement agreements, and ordered the parties to file any settlement testimony or corrections to their pre-filed testimony by April 25, 2024.

7. 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.

8. Since adopting the procedural schedule, the parties have worked toward a settlement agreement. At the parties' request, the ALJ issued Decision No. R24-0264-I on April 23, 2024, extending the deadline by which the parties were to advise the ALJ of any stipulations or settlement agreements to April 26, 2024, and the deadline by which the parties were

to file their settlement testimony or corrections to their prefiled testimony to April 30, 2024. However, Decision No. R24-0264-I did not vacate or reschedule the May 2-3, 2024, hearing dates.

9. Decision No. R24-0264-I also alerted the parties that the ALJ would likely have some questions about the terms of any settlement. In particular, Decision No. R24-0264-I suggested that the parties consider demonstrating the Company's technology and user experience to ensure its customers are able to navigate the Company's data.

10. Citing to the ALJ's suggestion, on April 25, 2024, Mission:data filed a Request for Issuance of Subpoena to be served upon Public Service which seeks the production of certain records at the hearing and testimony at the hearing.

11. Subsequently, on April 26, 2024, counsel for Public Service advised that it had reached a settlement agreement with Staff and UCA, but had not obtained Mission:data's consent to the settlement. Public Service, Staff, and UCA (the Settling Parties) filed their Joint Motion to Approve Settlement Agreement (Joint Motion to Approve Settlement), along with their Settlement Agreement, on April 26, 2024.

12. Public Service responded to Mission:data's subpoena request on April 29, 2024.

13. That same day, April 29, 2024, the undersigned ALJ informally contacted the parties via email to inquire about their positions regarding the settlement and the hearing. The parties and the undersigned ALJ exchanged numerous emails discussing the rescheduling of the hearing and the parameters of the rescheduled hearing.

II. VACATION AND RESCHEDULING OF EVIDENTIARY HEARING

14. During the lengthy email exchange between the parties and the ALJ, counsel for Mission:data, Jake Schlesinger, advised that Mission:data opposes the settlement, but requested that the hearing be vacated to allow it time to review the settlement further and prepare for any ensuing hearing pertaining to the settlement. In addition, Mr. Schlesinger indicated that a recent, serious injury would also make it difficult for him to proceed with a hearing on May 2-3, 2024.

15. Each of the parties indicated by reply email that they do not object to Mission:data's informal request to vacate and reschedule the evidentiary hearing.

16. After considerable discussion, the parties agreed to reschedule the hearing on the Joint Motion to Approve Settlement to June 13-14, 2024.

17. The ALJ finds and concludes that vacating and rescheduling the evidentiary hearing is appropriate and warranted to provide the parties time to review the settlement, submit any prefiled testimony in support of the settlement, and prepare for the hearing. In addition, the ALJ notes that Mr. Schlesinger's health issues may render him unavailable to participate in a hearing May 2-3, 2024.

18. The ALJ will therefore vacate the evidentiary hearing currently set for May 2-3, 2024, and reschedule it to June 13-14, 2024. The rescheduled hearing will be conducted fully remotely to accommodate the parties' and counsels' schedules and availability and to ensure Public Service can demonstrate its pertinent technology.

19. If necessary, the ALJ may order additional measures to govern the evidentiary hearing.

III. FURTHER MODIFICATION OF PROCEDURAL SCHEDULE

20. In light of the vacation and rescheduling of the evidentiary hearing, Public Service requested that the procedural schedule be further modified to allow it time to prepare in advance of this new hearing date. Public Service proposed modifying the procedural schedule as follows:

Event	Current Date	Proposed Date
Settlement Testimony	April 30	May 3
Cross-Examination Matrix	April 30	June 6
Hearing	May 2-3	June 13-14

21. The ALJ finds and concludes that because the evidentiary hearing will be rescheduled, it is appropriate and warranted to likewise adjust and modify the procedural schedule. The ALJ will therefore modify the procedural schedule as requested by Public Service.

22. The parties are advised that the ALJ intends to propound questions regarding the Settlement Agreement upon the Settling Parties which may necessitate further modifications to the procedural schedule.

IV. MISSION:DATA'S REQUEST FOR SUBPOENA

23. Mission:data also requested the issuance of a subpoena requiring Public Service to produce documents, information, and testimony at the May 2-3, 2024, evidentiary hearing.

24. In light of the vacation of the May 2-3, 2024, evidentiary hearing, Mission:data's subpoena request has been rendered moot.

25. The ALJ will therefore deny Mission:data's subpoena request as moot.

V. REQUEST FOR ADDITIONAL DISCOVERY

26. During the informal email exchange, Mission:data informally requested that it be permitted to conduct discovery related to both the Settlement Agreement itself and any testimony filed in support of the Settlement Agreement.

27. Public Service objects to this request, arguing that any further discovery at this stage is inappropriate and would be burdensome while Public Service prepares for the June 13-14, 2024, evidentiary hearing.

28. The ALJ agrees. A hearing in this matter was to commence May 2-3, 2024. Rule 1405(d) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, limits discovery as follows:

(d) In proceedings where prefiled testimony is filed, the last day to propound written discovery directed solely to direct testimony shall be the deadline for filing answer testimony, the last day to propound discovery solely directed to answer testimony shall be the deadline for filing rebuttal and cross-answer testimony and *the last day to propound discovery solely directed to rebuttal and cross-answer testimony shall be five business days before the first day of hearing.* (Emphasis added.)

29. Given that the hearing was set to commence on May 2, 2024, under Rule 1405(d), any discovery the parties wished to conduct in this Proceeding should have been completed by April 25, 2024. Thus, by the time Mission:data asked that the evidentiary hearing be vacated and rescheduled, discovery had already closed.

30. The ALJ does not believe that the vacation and rescheduling of the evidentiary hearing necessitates that the parties engage in additional discovery. Rather, all discovery should have been completed before the parties even considered rescheduling the hearing.

31. Moreover, as Public Service notes, the submission of testimony in support of a settlement is a relatively new phenomenon. The ALJ knows of no Rule, nor any anecdotal

evidence of situations, in which the Commission permitted discovery based upon settlement testimony, and Mission:data has not pointed to any.

32. Should the parties' settlement testimony, if any, raise questions which Mission:data seeks to have answered, it will have an opportunity to do so by cross-examination at the June 13-14, 2024 evidentiary hearing.

VI. ORDER

A. It Is Ordered That:

1. The evidentiary hearing scheduled for May 2-3, 2024, is vacated.
2. A fully remote evidentiary hearing on the Joint Motion to Approve Settlement Agreement filed by Public Service Company of Colorado, Trial Staff of the Colorado Public Utilities Commission, and the Colorado Office of the Utility Consumer Advocate on April 26, 2024, is scheduled as follows:

DATE:	June 13-14, 2024
TIME:	9:00 a.m.
PLACE:	Join by video conference using Zoom

3. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

4. **Instructions for Remote Hearings Via Zoom:** Detailed instructions governing participation in and procedures for remote hearings conducted via Zoom are set out in Attachment A to this order, which is incorporated into and made part of this order.

5. The ALJ will hold an informal Zoom practice session upon request.

6. The procedural schedule adopted By Decision No. R24-0055-I, issued January 25, 2024, and modified by Decision No. R24-0264-I, issued April 23, 2024, is further modified as follows:

Event	Current Date	Proposed Date
Settlement Testimony	April 30, 2024	May 3, 2024
Cross-Examination Matrix	April 30, 2024	June 6, 2024
Hearing	May 2-3, 2024	June 13-14, 2024

7. The provisions for the presentation of evidence at the hearing and the unified numbering system adopted by Decision No. R24-0055-I remain in effect. The parties are to adhere to the instructions regarding exhibits contained in Decision No. R24-0055-I.

8. The parties may not engage in additional discovery beyond the submission of any settlement testimony.

9. The Request for Subpoena submitted by Intervenor Mission:data Coalition, Inc., on April 25, 2024, is denied as moot.

10. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge