

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0382ST

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS STEAM REGULATORY AND RESOURCE PLAN.

**INTERIM DECISION SCHEDULING HEARING,
ESTABLISHING PROCEDURAL SCHEDULE,
EXTENDING DEADLINE FOR FINAL DECISION,
AND REQUIRING FILING**

Issued Date: July 9, 2024

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I. STATEMENT, SUMMARY AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision waives the remaining response time to Public Service Company of Colorado’s (“Public Service” or “the Company”) Unopposed Joint Motion for Adoption of Procedural Schedule filed June 25, 2024 (“Motion”); partially grants the Motion; schedules a fully remote evidentiary hearing for September 24, 2024; establishes a procedural schedule and

procedures to accommodate that hearing; extends the deadline for a final decision to issue; and dismisses the Colorado Energy Consumers (“CEC”) as a party if it fails to make a filing by July 17, 2024 that demonstrates good cause to maintain its party status.

B. Procedural History¹

2. On September 1, 2022, Public Service filed the above-captioned Application for approval of its Regulatory and Resource Plan (“Plan”) concerning the investments in and operations of its district steam system through 2030, as required by the Settlement Agreement approved by Decision Nos. R19-0591, C19-0734 and C22-0251 in the Company’s most recent Steam Rate Case, Proceeding No. 19AL-0063ST. With the Plan, the Company also filed the results of an Engineering Study that includes an evaluation of each of the Company’s individual customer’s steam facilities and potential future conversion to another fuel source.

3. On September 2, 2022, the Commission issued a Notice of the Application.

4. In addition to the Company, the following entities are parties to this Proceeding: Public Utilities Commission Trial Staff (“Staff”), the Colorado Energy Office (“CEO”), CEC, and the City and County of Denver (“Denver”).²

5. On October 19, 2022, the Commission directed Public Service to work with the parties to determine an approach to developing information that will enable the Commission to determine whether air-source heat pumps, district geo-exchange, or other geothermal technologies (“Additional Technologies”) are viable alternatives for the Company’s steam system customers.³ The Commission ordered Public Service to either present a proposal to study the Additional Technologies or explain why it believes they are not viable candidates at this time, and directed

¹ Only the procedural history necessary to understand this Decision is included.

² Decision No. C22-0633-I at 9 (mailed Oct. 19, 2022).

³ *Id.*

the Company to analyze steam rates through 2030 assuming a 7.5 percent annual reduction of steam sales, and to submit this analysis.⁴

6. On December 5, 2022, Public Service filed its Additional Technologies Report (“Report”) in which it described discussions with the parties on a variety of relevant topics, and stated the Company plans to file another report within 90 days with the finalized scopes of work, cost, and timelines to formally study the Additional Technologies’ viability (“Additional Technologies’ Studies”).⁵ At the same time, the Company also filed Supplemental Direct Testimony.

7. On December 29, 2022, the Commission ordered the Company to continue to work with the parties on the scope of work for Additional Technologies’ Studies, and to file the finalized scope of work within 90 days.⁶

8. On March 29, 2023, the Company filed the proposed scopes of work for two proposed projects.

9. On April 25, 2023, the Commission approved the scopes of work for the two studies and held this Proceeding in abeyance until the studies are completed, and the Company submits

⁴ *Id.* at 10.

⁵ See Additional Technologies Report filed Dec. 5, 2022 (“Report”) at 2, 4-7.

⁶ Decision No. C22-0841-I at 4 (mailed Dec. 29, 2022).

additional supplemental direct testimony.⁷ The Commission also provided specific direction to address certain issues in its anticipated additional supplemental direct testimony.⁸

10. On May 6, 2024, the Company filed the Additional Technologies' Studies along with Second Supplemental Direct Testimony for three witnesses.

11. On June 11, 2024, the Commission found that with the Additional Technologies' Studies, the Company's Application is complete, per § 40-6-109.5, C.R.S., and referred this matter to an administrative law judge ("ALJ") for disposition.⁹ At the same time, the Commission required the Company to file additional supplemental direct testimony addressing the following questions:

- 1) The Company indicates that an estimated 27 percent of existing steam customers would have a payback of 8 years or less by switching to gas heating sources. Assuming those customers moved their entire peak heating load to gas, what is the estimated cost of upgraded gas infrastructure, both in the immediate local vicinity and upstream in order to accommodate the increased capacity requirements? Also, include any safety/integrity projects known to be needed to continue safely serving gas to the study area. All costs should be provided in actual capital expenditure, as well as anticipated revenue requirement, including typical additions to cost like net salvage value and operations and maintenance expenses.
- 2) The Company indicates that there is the potential for a negative spiral to occur if a significant number of existing steam customers leave the steam system, presumably for the gas option. Please provide each of the requested cost projections described in the previous question for the circumstance in which all existing steam customers switch to gas and the gas system must accommodate the entirety of the peak heating load from all steam network customers.

⁷ Decision No. C23-0265-I at 5-6 (mailed April 25, 2023). The ALJ notes that the administrative record indicates this Decision was filed on April 21, 2023, but the Decision itself reflects an April 25, 2023 mailed date; as such, the ALJ relies on the April 25, 2023 date.

⁸ *Id.* at 5. Specifically, the Commission ordered that such testimony discuss the studies' findings and significance in the context of the existing steam system and completed studies of the technical and financial viability of current steam customers migrating to on-site gas-fired and electric boilers. *Id.* The Commission also ordered that the testimony compare the lifecycle costs (from both the customer and system perspectives) and payback periods for each of the five technology options (on-site electric boilers, on-site gas boilers, on-site air-source heat pumps, on-site ground-source heat pumps, and an ambient temperature district system with associated on-site heat pumps). *Id.* The Commission required the testimony on potential heat pump adoption to incorporate the impacts of both federal and state subsidies and tax credits for each technology. *Id.*

⁹ Decision No. C24-0401-I at 5 and 7 (mailed June 11, 2024)

- 3) Please identify both the number of current steam customers and the percentage of steam revenues those customers represent that are subject to either Regulation 28, Denver's Building Performance Standard, or other requirements that are likely to impact the building's heating source or efficiency. Has the Company in any way identified the expected costs of compliance for those customers in order to compare or net out the incremental costs of water source heat pumps and ancillary equipment against improvements that would otherwise be necessary to comply with applicable regulations? If estimates or analysis were done either on the net incremental cost to customers or on the projected changes in heating and cooling demands as a result of applicable building regulations, please provide those and identify if the company used them in any way in its analysis.¹⁰

12. The undersigned ALJ was subsequently assigned to this Proceeding. The ALJ informally directed the parties to confer on a procedural schedule and Public Service to file a proposed consensus procedural schedule by June 25, 2024.

13. On June 25, 2024, Public Service filed the Motion.

II. DISCUSSION AND FINDINGS

A. Procedural Schedule

14. Staff, Denver, and CEO join Public Service in the Motion (Joint Movants).¹¹ The Motion states that CEC, the only other party in this Proceeding, indicated that it will no longer be actively participating in this Proceeding, and takes no position on the Motion.¹² Because the Motion is unopposed, the Company asks that the response time to it be waived.¹³

15. The Motion proposes the following procedural schedule:

Event	Date or Deadline
Third Supplemental Direct Testimony	July 17, 2024
Answer Testimony	August 9, 2024
Rebuttal & Cross-Answer Testimony	August 30, 2024
Stipulations/Settlement Agreements	September 13, 2024

¹⁰ *Id.* at 6, citing Hearing Exhibit 101 at 28-29.

¹¹ Motion at 1.

¹² *Id.*

¹³ *Id.* at 3.

Event	Date or Deadline
Pre-Hearing Motions	September 13, 2024
Settlement Testimony	September 18, 2024
Corrections to Pre-filed Testimony & Exhibits	September 18, 2024
Joint Witness Examination Matrix	September 19, 2024
Non-Testimonial Exhibits	September 19, 2024
Exhibit and Witness Lists	September 19, 2024
Responses to Prehearing Motions	September 20, 2024
Hearing (One Day)	September 24, 2024
Statements of Position	October 14, 2024 ¹⁴

16. The Motion states that the Joint Movants agree to the following modifications to the Commission's discovery rules: the procedures under Rule 1405(f) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 are modified such that the last day to serve discovery on rebuttal and cross answer testimony will be 11 days prior to the first day of hearing, or by September 13, 2024; and discovery served on a non-business day must be served by 3:00 p.m. to be considered served that day or will be deemed served on the next business day.¹⁵

17. The Joint Movants ask that the hearing be fully remote.¹⁶

18. Because the Motion is unopposed, the ALJ finds good cause to waive the response time to it and does so.¹⁷

19. The ALJ finds the Motion's request to hold the hearing remotely and modifications to the Commission's discovery rules reasonable under the circumstances. As such, those items are approved. The discovery modifications apply to all parties, including CEC.

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ *See* Rule 1400(b), 4 CCR 723-1.

20. For the most part, the ALJ finds the Motion's proposed schedule reasonable, and as such, will approve most of the proposed schedule. For the reasons discussed below, the ALJ rejects the proposed deadlines to file non-testimonial hearing exhibits, prehearing motions, and responses to prehearing motions.

21. As the hearing will be remote, all documentary evidence will be presented electronically using a spreadsheet with hyperlinks to the parties' exhibits as they appear in the administrative record ("spreadsheet"). That spreadsheet will be distributed to the parties before the hearing so they may review it, confirm that it includes the exhibits they intend to offer into evidence, and if it does not, to take action to correct this prior to the hearing. The proposed deadline to file non-testimonial exhibits is September 19, 2024. This does not allow enough time to time to create the spreadsheet and for the parties to review it, confirm that it includes all the exhibits they intend to offer into evidence, and if not, to take steps to ensure the spreadsheet includes any missing exhibits before the hearing. As such, the ALJ rejects this proposed deadline and modifies it to September 18, 2024. The ALJ also rejects the Motion's September 13, 2024 prehearing motions deadline and September 20, 2024 deadline for responses to the same, which will be September 19 and 23, 2024, respectively. This preserves the parties' ability to file prehearing motions related to corrected testimonial exhibits and non-testimonial exhibits.¹⁸ Other than these changes, the ALJ approves the Motion's proposed procedural schedule, as set forth in the ordering paragraphs below.

22. Attachment A hereto includes important technical information and requirements to facilitate accommodating remote hearing participation. Persons wishing to observe but not

¹⁸ When the ALJ informally contacted the parties to require them to submit a proposed schedule, she specifically told the parties that the deadline to file exhibits should be before the deadline to file prehearing motions.

participate in the hearing are encouraged to observe the hearing via the Commission's webcast, rather than join the Zoom hearing. This will help minimize background noise and avoid issues that may arise should the ALJ need to hold confidential or highly confidential hearing session.

23. Attachment B includes information and requirements to facilitate electronic evidentiary presentations at the hearing. Many requirements in Attachment B apply to formatting, marking, and filing exhibits, and are critical to ensure a smooth evidentiary presentation. The ALJ has observed parties in other proceedings repeatedly failing to comply with these formatting, marking, and filing requirements. Despite continual reminders in procedural orders, many of the same errors continue. *Common errors include failing to include a brief description of attachments to exhibits in exhibit lists; failing to title attachments to exhibits to include the title of the document (i.e., the substantive nature of the attachment), but instead filing them solely with the exhibit and attachment numbers;*¹⁹ *failing to follow procedures for exhibits and attachments that include confidential or highly confidential information; and failing to follow identification requirements for revised exhibits or attachments thereto. **No party should assume that these examples do not apply to them.***

24. These repeated errors have resulted in a tremendous waste of resources—both by Commission support staff, who have been forced to carefully review each filed exhibit and contact parties to point out errors—and by parties who have to reformat and refile exhibits. It has also created unnecessary confusion as to which exhibits will be offered into evidence, particularly when parties incorrectly number their exhibits, fail to correctly mark revised exhibits, or fail to file a

¹⁹ For example, if Attachment ABC-1 to Hearing Exhibit 100 is a study, when it is filed in E-Filings, the filing party should enter the title as "Hearing Exhibit 100, Attachment ABC-1, Study." When describing the Attachment in this example in an exhibit list, parties should use the same title referenced above, and include a brief description of the attachment, such as "Additional Technologies' Study." This is consistent with the requirements in Attachment B to this Decision, and to the extent necessary, this Decision explicitly clarifies these requirements.

public version of confidential or highly confidential exhibits. As such, the ALJ again *implores the parties to ensure that they follow all procedural requirements relating to exhibits and attachments thereto.*²⁰

25. To minimize the potential that the hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the parties' counsel by email before the hearing, and the parties will be prohibited from distributing that information to anyone not participating in the hearing.²¹ Counsel and the parties are responsible for ensuring that their witnesses receive the Zoom information needed to join the hearing.

26. *The parties are on notice* that consistent with Commission practice, friendly cross-examination will not be permitted during the evidentiary hearing.

B. Deadline for Final Commission Decision

27. Given the approved procedural schedule and the nature of the issues involved in this Proceeding, the ALJ finds that additional time is necessary for a final Commission decision to issue. As such, the ALJ extends the statutory deadline for a final Commission decision to issue by 130 days, as permitted by § 40-6-109.5(1), C.R.S. As noted above, the Commission issued its written Decision deeming the Application complete on June 11, 2024. Based on the foregoing, the deadline for a final Commission decision is February 18, 2025.²²

²⁰ Any party who is uncertain as to whether they have correctly followed the required procedures may contact Casey Federico at casey.federico@state.co.us or Stephanie Kunkel at stephanie.kunkel@state.co.us to confirm that they have correctly followed the procedural requirements.

²¹ Approximately one week before the hearing, counsel will receive an email with information needed to join the hearing at the email addresses on file with the Commission for this proceeding. Counsel must ensure that the Commission has their most current email address.

²² This date is determined by adding 250 days to the date on which the Commission's decision deeming the Application complete became effective (June 11, 2024). Decision No. C24-0401-1 at 7. See § 40-6-109.5(1), C.R.S. That date falls on Sunday, February 16, 2025, and the following day is the President's Day holiday. By operation of law, the deadline automatically reverts to the next business day, which is February 18, 2025. § 2-4-108(2), C.R.S.

C. CEC's Party Status

28. As noted, the Motion states that CEC has indicated that it will no longer be actively participating in this Proceeding.²³ Given this, the ALJ sees no reason for CEC to continue to be a party to this Proceeding. Indeed, maintaining CEC as a party when it does not plan to participate in this Proceeding may unnecessarily increase the costs of litigation. For these reasons, this Decision dismisses CEC as a party if it fails to make a filing by the established deadline (July 22, 2024) that demonstrates good cause to maintain its party status. If CEC does not object to being dismissed as a party, it need not make any filing. If CEC objects, it must make the filing by July 22, 2024. If it fails to do so, it will automatically be dismissed as a party as of July 22, 2024.

29. To preserve CEC's ability to participate in this matter and in an abundance of caution, the ALJ will assign CEC hearing exhibit numbers.

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

1. Consistent with the above discussion, the deadline for a final Commission decision to issue in this Proceeding is extended by 130 days to February 18, 2025, as permitted by § 40-6-109.5(1), C.R.S.

2. The remaining response time to Public Service Company of Colorado's ("Public Service") Unopposed Joint Motion for Adoption of Procedural Schedule filed June 25, 2024 ("Motion") is waived and the Motion is partially granted consistent with the above discussion, and as set forth below.

²³ Motion at 1.

3. The Colorado Energy Consumers (“CEC”) is dismissed as a party without further order if it fails to make a filing **on or by July 17, 2024** establishing good cause to maintain its party status.

4. A fully remote evidentiary hearing on the above-captioned Application is scheduled as follows:

DATE: September 24, 2024

TIME: 9:00 a.m.

PLACE: By videoconference using Zoom.

5. The parties are responsible for sharing the link, meeting ID code, and passcode with witnesses and others participating in the hearing. Participants in the hearing may not distribute the link, meeting ID code, and passcode to anyone not participating in the hearing.

6. All parties must comply with the requirements in Attachments A and B to this Decision, which are incorporated into this Decision as if fully set forth herein.

7. Non-participants in the evidentiary hearing may observe the hearing live through the Commission’s webcast for the Hearing Room assigned for each of the above hearing dates, which may be accessed at this link: <https://puc.colorado.gov/webcasts>.

8. **Third Supplemental Direct Testimony Deadline.** Public Service’s third supplemental direct testimony must be filed and served by July 17, 2024.

9. **Answer Testimony Deadline.** Interveners’ answer testimony must be filed and served by August 9, 2024.

10. **Rebuttal and Cross-Answer Testimony Deadlines.** Public Service’s rebuttal testimony, and Interveners’ cross-answer testimony must be filed and served by August 30, 2024.

11. **Deadline for Stipulations and Settlement Agreements.** The parties must file and serve any stipulations and settlement agreements by September 13, 2024.

12. **Deadline for Settlement Testimony.** By September 18, 2024, the parties must file and serve testimony in support of or in response to any settlement agreement that is filed.

13. **Corrections, Modifications, and Amendments to Testimonial Exhibits.** The parties must file and serve any corrected, modified, or amended testimonial exhibits and attachments thereto (*i.e.*, corrections to answer, rebuttal, and cross-answer testimony and attachments) by September 18, 2024. The parties are *again* reminded that such filings *must comply* with the specific requirements in Attachment B relating to corrected, modified, or amended testimonial exhibits and attachments, as clarified by this Decision. The parties may make corrections to testimonial exhibits and attachments thereto without filing a motion seeking leave to do so. Corrections include minor changes, such as fixing typographical or formatting errors. Corrections do not include material or substantive changes. Material or substantive changes to a testimonial hearing exhibit or attachment thereto amount to amending or modifying such documents. Any party wishing to amend or modify a testimonial exhibit or attachment thereto must file a motion establishing good cause; such a motion must be filed as soon as the party becomes aware of the need to amend or modify the filing. The parties must confer with each other prior to filing such a motion. Unreasonable delay in filing such a motion is grounds to deny the motion.

14. **Deadline for Non-Testimonial Hearing Exhibits.** By September 18, 2024, the parties must file and serve any non-testimonial hearing exhibits that they plan to offer into evidence (*i.e.*, exhibits not already filed per other deadlines). The parties are not required to pre-file and serve hearing exhibits which may be used solely for impeachment, to refresh recollection, or for rebuttal. *The parties are on notice* that if they do not prefile an exhibit for any of these reasons, they must establish at hearing that the exhibit is being used for impeachment or to refresh recollection consistent with the requirements of Rules 612 and 613 of the Colorado Rules of

Evidence, or for rebuttal. Any party may use any other party's hearing exhibits during the hearing and should not file them separately.

15. **Deadline for Final Versions of Exhibits and Obligation to Review Hearing Spreadsheet.** September 18, 2024 is the deadline to file *final versions of all exhibits*, as referenced in Attachment B hereto. The parties must review the hyperlinked spreadsheet that will be used during the hearing to present exhibits and confirm that it correctly includes all the exhibits that they intend to offer into evidence during the hearing. If it does not, the parties are responsible for taking action to correct it.

16. **Deadline for Hearing Exhibit and Witness Lists.** By September 19, 2024, the parties must file and serve complete exhibit and witness lists. Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information. Exhibit lists must identify the hearing exhibit and attachment number, the full title of each hearing exhibit and attachment thereto and include a brief description of each hearing exhibit and attachment thereto that the party intends to offer into evidence during the evidentiary hearing. Describing an exhibit or attachment solely by identifying the exhibit or attachment number *does not meet* this requirement. For example, describing an exhibit and attachment as "Hearing Exhibit 100" and "Hearing Exhibit 100, Attachment ABC-1" without information as to substantive nature or content of the exhibit or attachment does not comply with this Decision's requirements. Rather, if Attachment ABC-1 is a study, it could be marked as "Hearing Exhibit 100, Attachment ABC-1, Study."

17. **Deadline for Joint Witness Examination Matrix.** By September 19, 2024, the parties must file a joint witness examination matrix listing all the witnesses the parties anticipate will testify at the hearing and the anticipated amount of time each party will use to examine the

witnesses. To the extent practicable, the witnesses should be listed in the order in which they will be called. The parties also must assume that the Administrative Law Judge will use some time to examine witnesses.

18. **Deadlines for Prehearing Motions and Responses Thereto.** The parties must file and serve any prehearing motions by September 19, 2024. Responses to prehearing motions must be filed by September 23, 2024.

19. **Deadline for Statements of Position.** By October 14, 2024, the parties must file Statements of Position.

20. **Hearing Exhibit Number Block Assignments.** To efficiently organize exhibits that will be presented during the evidentiary hearing, all parties must use a unified numbering system for all hearing exhibits, consistent with the directions in Attachment B, using hearing exhibits within their assigned exhibit number blocks. The parties are assigned the following hearing exhibit numbers:

Party	Assigned Hearing Exhibit Numbers
Public Service	100 to 299
Public Utilities Commission Trial Staff (“Staff”)	300 to 399
The Colorado Energy Office	400 to 499
The City and County of Denver	500 to 599
CEC	600 to 699

21. Any party requiring more exhibit numbers than assigned may use the same numerical sequence of exhibit numbers assigned to them, but in the 1000 range (e.g., Public Service will use hearing exhibit numbers 1100-1299; Staff will use hearing exhibit numbers 1300-1399, etc.). Hearing Exhibit 700 is reserved for the hyperlinked spreadsheet that will be used during the hearing to present evidence.

22. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director