

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0515E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS COST RECOVERY PROPOSAL ASSOCIATED WITH THE EARLY RETIREMENTS OF COAL GENERATION ASSETS CRAIG 2, HAYDEN 1, AND HAYDEN 2, AND THE RETIRING COAL PORTION OF PAWNEE.

**INTERIM COMMISSION DECISION ESTABLISHING THE
PARTIES; ESTABLISHING PROCEDURAL SCHEDULE
AND DISCOVERY PROVISIONS; SCHEDULING AN
EVIDENTIARY HEARING AND RESERVING AN
ALTERNATIVE EVIDENTIARY HEARING DATE;
WAIVING RESPONSE TIME; EXTENDING DECISION
DEADLINE UNDER § 40-6-109.5(1), C.R.S.; REFERRING
CERTAIN ITEMS TO AN ADMINISTRATIVE LAW
JUDGE; AND FURTHER ESTABLISHING PROCEDURES
FOR PRESENTATION AND SUBMISSION OF EXHIBITS**

Mailed Date: December 15, 2022

Adopted Date: December 14, 2022

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I. **BY THE COMMISSION**

A. **Statement**

1. On November 17, 2022, Public Service Company of Colorado (Public Service or the Company) filed an Application for Approval of its Cost Recovery Proposal Associated with the Early Retirements of Coal Generation Assets Craig 2, Hayden 1 and Hayden 2, and the retiring coal portion of Pawnee (Application).

2. Through this Decision, we address the Unopposed Motion to Approve Procedural Schedule and for a Final Commission Decision on or before April 28, 2023, and Request of Waiver of Response Time (Unopposed Motion) that Public Service filed on December 8, 2022. Specifically, consistent with the discussion below, we: (1) adopt the schedule set forth in the Unopposed Motion; (2) schedule a remote evidentiary hearing and an alternative evidentiary hearing; (3) adopt the parties' proposed discovery procedures; (4) decline Public Service's request for a Commission decision on or before April 28, 2023, and (5) waive response time to the Unopposed Motion.

3. To accommodate the unopposed procedural schedule, we also extend the decision deadline in this Proceeding pursuant to § 40-6-109.5(1), C.R.S. Further, we refer discovery disputes and any motions for extraordinary protection to an Administrative Law Judge (ALJ), consistent with the below discussion.

4. This Decision also establishes the parties to this Proceeding.

5. Finally, through this Decision, we set procedures for the submission and presentation of exhibits.

B. Interventions

1. Interventions as of Right

6. Staff of the Colorado Public Utilities Commission (Staff) and the Office of Utility Consumer Advocate (UCA) both timely filed notices of intervention by right.

7. UCA represents the public interest and specific interests of residential, small business, and agricultural customers under § 40-6.5-104, C.R.S. UCA plans to analyze issues such as whether the Company's cost recovery proposal is cost-effective and in the public interest. Staff intends to address issues such as whether the Company should adopt a hybrid cost recovery approach (*e.g.*, accelerated depreciation for a percentage of the net book values followed by amortization of the remaining balance).

8. Pursuant to Rule 4 CCR 723-1-1401(b), no decision is required in response to appropriately filed notices of intervention by right. The notices of intervention of right are accepted. UCA and Staff are parties to this Proceeding.

2. Permissive Intervenor

9. Climax Molybdenum Company (Climax), Colorado Energy Consumers (CEC), and Natural Resources Defense Council and Sierra Club (collectively, the Conservation Coalition) each timely filed motions for permissive intervention on November 30, 2023.

10. Climax operates the Climax and Henderson molybdenum mines and states that it is one of the Company's largest electrical service customers. Climax states that the Commission's decision in this case will directly and substantially affect Climax's cost and reliability of electricity necessary for mining and milling molybdenum and, thus, will substantially affect Climax's tangible and pecuniary interests.

11. CEC is an unincorporated association comprised of energy consumers, all of which operate facilities within Public Service's service territory and purchase electricity and related energy services from the Company. CEC asserts that, if approved, Public Service's Application will have a direct and substantial impact on the rates CEC members pay for electric service, and the selected cost recovery method will determine the magnitude and timing of such rate impact. CEC states that it has a direct, tangible, and pecuniary interest in this Proceeding that cannot be adequately represented by any other party to this Proceeding.

12. The Conservation Coalition is comprised of national non-profit environmental organizations and states that it has thousands of members in Colorado who purchase electricity from Public Service. The Conservation Coalition asserts that it seeks leave to intervene to protect these members' direct and tangible interests, including health, environmental, and economic interests, that will be affected by the retirement of the Craig, Hayden, and Pawnee units, and the associated decisions regarding cost recovery. In addition, the Conservation Coalition argues that no other party will adequately represent its members' interests, noting that the Conservation

Coalition has unique knowledge and experience related to regulation of utilities and the environmental, health, and economic impacts of decisions related to energy generation and consumption in Colorado.

3. Standard for Permissive Intervention

13. Section 40-6-109(1), C.R.S., creates two classes of parties that may participate in Commission proceedings: those who may intervene as of right and those whom the Commission permits to intervene.¹ For a party to be “interested in or affected by” a proceeding, requires “a substantial personal interest in the subject matter of the proceedings [whose] intervention will not unduly broaden the issues.”²

14. Rule 4 CCR 723-1-1401(c) of the Commission’s Rules of Practice and Procedure corresponds with this standard and states in relevant part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission’s jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant’s interests would not otherwise be adequately represented.

15. Further, Rule 4 CCR 723-1-1401(c) requires that a movant who is a “residential consumer, agricultural consumer, or small business consumer” discuss in the motion whether the distinct interest of the consumer is either not adequately represented by the UCA or inconsistent with other classes of consumers represented by the UCA. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., the UCA has a statutory mandate to represent the interests of

¹ *Pub. Serv. Co. of Colo. v. Trigen-Nations Energy Co.*, 982 P.2d 316, 327 (Colo. 1999).

² *Id.* (emphasis added).

residential ratepayers. “[I]f there is a party charged by law with representing [the individual’s] interest, then a compelling showing should be required to demonstrate why this representation is not adequate.”³

16. Pursuant to Rule 1500, the person seeking leave to intervene by permission bears the burden of proof with respect to the relief sought.

4. Findings and Conclusions on Interventions

17. No responses have been filed opposing any of the entities seeking to intervene, and each entity seeking permissive intervention has sufficiently demonstrated that this Proceeding may substantially affect its pecuniary or tangible interests pursuant to Rule 1401(c). Each entity seeking permissive intervention has also demonstrated compliance with the other requirements under Rule 1401(c). Therefore, we grant the requests for permissive intervention.

18. Particularly given the expedited nature of this Proceeding, parties are reminded and encouraged to seek efficiencies through conferral where their respective positions may align such that pleadings or positions can be provided concisely, and jointly, if possible.

19. The following are parties to this Proceeding: Public Service, Staff, UCA, Climax, CEC, and the Conservation Coalition.

C. Unopposed Motion, Extension of Decision Deadline, and Referral of Certain Matters to an ALJ

20. In Decision No. C22-0757, issued November 23, 2022, we set this matter for an *en banc* hearing, shortened the notice and intervention period, and required Public Service to confer

³ *Feign v. Alexa Group, Ltd.*, 19 P.3d 23, 26 (Colo. 2001).

with parties seeking to intervene on a consensus procedural schedule and report back to the Commission on the results of such conferral on or before December 8, 2022.

21. Consistent with Decision No. C22-0757, on December 8, 2022, Public Service filed the Unopposed Motion. In the Unopposed Motion, Public Service states that it conferred with all parties seeking intervention (*i.e.*, Staff, UCA, Climax, CEC, and the Conservation Coalition) and reached a consensus procedural schedule and discovery procedures. The consensus procedural schedule is as follows:

Event	Proposed Date
Supplemental Direct Testimony	December 23, 2022
Answer Testimony	January 31, 2023
Rebuttal and Cross-Answer Testimony	February 28, 2023
Stipulations and Settlement Agreements	March 14, 2023
Cross-Examination Matrix, Corrections to Prefiled Testimony, and Exhibits	March 15, 2023
Evidentiary Hearing	March 20, 21, and the afternoon of March 22, 2023
Statements of Position	March 30, 2023
Requested Deadline for Commission Decision	April 28, 2023

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22. In addition, the Company requests that the Commission approve Public Service's request for an expedited Commission decision on or before April 28, 2023. According to the Unopposed Motion, all of the parties have expressed a willingness and ability to accommodate this proposed procedural schedule and a requested Commission decision deadline of April 28, 2023.

⁴ Unopposed Motion, p. 7

23. The Unopposed Motion also notes, however, that Staff “suggests the Commission also consider the possibility of a non-expedited procedural schedule.”⁵ Staff maintains that the standard 250-day procedural schedule would allow the Commission to overlay the various cost recovery methodologies on the costs associated with the Commission’s CEP/ERP portfolio selected in Phase II of Proceeding No. 21A-0141E. Public Service disputes Staff’s suggestion that a non-expedited schedule is a workable path in this case, arguing that the cost recovery treatment of its coal assets are key inputs necessary for the Phase II modeling.

24. In addition, the Unopposed Motion states that, subject to Commission approval, the parties have agreed that the discovery rules and procedures contained in Rule 1405 of the Rules of Practice and Procedures, 4 *Code of Colorado Regulations* 723-1, should govern discovery in this Proceeding. However, the parties’ agreement modifies Rule 1405 such that discovery response times for all parties will be measured in “calendar” days when Commission rules reference “business” days.⁶

25. Finally, Public Service requests that the Commission waive response time to the Unopposed Motion pursuant to Rule 1308(c).

26. The Commission appreciates the conferral efforts that resulted in an uncontested proposed procedural schedule and will largely adopt the parties’ proposed deadlines.⁷ The primary modification we make to the procedural schedule relates to the deadline for stipulations and settlement agreements (March 14, 2023) and the start of the evidentiary hearing (March 20, 2023).

⁵ *Id.* at 2.

⁶ *Id.* at 7.

⁷ The Commission acknowledges Staff’s suggestion that this Proceeding could move forward under a non-expedited schedule and appreciates Staff’s concern about the overlay between this Proceeding and Phase II of Proceeding No. 21A-0141E. The Commission is confident that hearing this Proceeding on an expedited schedule will not prevent us from making the necessary determinations in Proceeding No. 21A-0141E.

The Commission is concerned that only having three business days to evaluate a potential settlement prior to the start of the evidentiary hearing might, in some scenarios, prove to be infeasible. In addition, while we decline to approve Public Service's request for a Commission decision on or before April 28, 2023, we note that an April 28, 2023, target date for a final decision does not appear to be unreasonable at this time based on the schedule proposed. Feasibility of a decision by the date requested depends largely on the party pleadings and advocacy throughout the Proceeding.

27. Accordingly, given the limited time between the stipulations and settlement deadline and the start of the evidentiary hearing, we will reserve alternative dates for an evidentiary hearing and statements of position. If, based on a filed stipulation or settlement, the Commission determines that beginning the evidentiary hearing on March 20, 2023, is infeasible, the Commission will vacate the hearing starting March 20, 2023, and reschedule the evidentiary hearing to the reserved dates of April 6 and 7, 2023. In this event, we will also vacate the March 30, 2023, deadline for statements of positions and will set a new deadline during the April evidentiary hearing.

28. To be clear, the Commission approves the deadlines set forth in the consensus procedural schedule as presented. We preemptively reserve alternative dates for an evidentiary hearing and note the possibility of resetting the deadline for statements of position. These schedule alterations may be necessary, for example, depending on the complexity of any potential settlement filed days prior to the currently scheduled hearing. In addition, the filing of any stipulation or settlement does not automatically vacate the evidentiary hearing beginning March 20, 2023, nor does it vacate the March 30, 2023, deadline for statements of position. Rather, if we determine that the stipulation or settlement makes beginning the hearing on March 20, 2023, infeasible, we

will direct in a future order the rescheduling of the evidentiary hearing on the reserved dates or as otherwise necessary.⁸

29. Thus, we schedule a three-day remote evidentiary hearing for March 20, 21, and the afternoon of March 22, 2023. We also reserve an alternative two-day remote evidentiary hearing for April 6 and 7, 2023. Parties shall be available for the March 20 through 22 hearing dates and the reserved April 6 and 7 hearing dates. The remote evidentiary hearing will be held using the web-hosted video conferencing service Zoom. To minimize the potential that the video conference may be disrupted by non-participants, the link and meeting ID or access code will be provided to the parties by e-mail before the hearing, and the parties are prohibited from distributing that information to anyone not participating in the hearing.

30. We approve the parties' proposal to have Rule 1405 govern the discovery procedures in this Proceeding, with the parties' modification that discovery response times will be measured in "calendar" days when Commission rules reference "business" days.

31. Given the consensus the parties achieved regarding the procedural schedule and discovery procedures, we grant the Company's request to waive response time to the Unopposed Motion.

32. Additionally, for procedural efficiencies, the Commission refers discovery disputes and all motions for extraordinary protection to an ALJ.

⁸ While a decision deadline is not adopted by this Decision, regardless of whether the hearing begins on March 20, 2023, or April 6, 2023, a target date of April 28, 2023, for a Commission decision does not appear unreasonable at this time.

33. On December 15, 2022, by operation of Rule 1303(c)(III) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the Application was deemed complete for purposes of § 40-6-109.5, C.R.S.

34. In order to accommodate the parties' proposed procedural schedule that the Commission largely adopts through this Decision, we find that the additional time permitted in § 40-6-109.5(1), C.R.S. is required in this Proceeding. We therefore extend the decision deadline by the 130 days allowed by statute. As noted above, however, a target date of April 28, 2023, for a Commission decision does not appear unreasonable at this time.

D. Presentation of Exhibits During Evidentiary Hearing

35. In connection with scheduling the evidentiary hearing in this Proceeding, we also set procedures for the submission and presentation of exhibits, as follows.

36. All evidence presented during the evidentiary hearing must be presented electronically. To facilitate the presentation and admission of electronic exhibits during the evidentiary hearing, the Commission will provide a spreadsheet identifying each hearing exhibit as it exists in the administrative record. The spreadsheet will include hyperlinks to the filings in the administrative record. The spreadsheet will be made available to the parties prior to the hearing and marked as a hearing exhibit. Commission Staff will display pre-filed electronic filings during the hearing.⁹

37. Any document previously filed by a party that will be offered into evidence but has not been identified in compliance with this Decision, must be revised and re-filed in accordance

⁹ Exhibits will be displayed electronically during the hearing. Should the parties have technical questions relating to the electronic presentation of exhibits, they may contact Ms. Casey Federico at Casey.Federico@state.co.us.

with this Decision. Any such filings shall be: (a) made within 14 days of the mailed date of this Decision; and (b) treated as the original filing of hearing exhibits.¹⁰

38. Any stipulations or settlement agreements, along with any associated testimony or exhibits, shall also be filed electronically in accordance with the procedures set forth below.

39. Final versions of all previously filed hearing exhibits must be filed on or before the fourth business day prior to the hearing,¹¹ unless otherwise ordered, so that the spreadsheet may be timely prepared and distributed during the three business days prior to the hearing. Hyperlinks will not be included for confidential or highly confidential information. If a party files any exhibits after this deadline, such late exhibits will not be included in the spreadsheet of hyperlinked electronic exhibits, and the party will need to separately move for the admission of the late exhibits during the hearing.

40. After the deadline for final versions, a party intending to present a document during the hearing must: (a) pre-mark such document with a hearing exhibit number within the party's assigned exhibit number block; and (b) upload such document into the party's designated box.com folder before presenting them during the hearing.¹² This includes documents not required to be pre-filed (*e.g.*, for impeachment, to refresh recollection, or for rebuttal).

¹⁰ Compliance with this Decision may result in a change to pagination of prior versions of hearing exhibits. References in discovery requests and responses to prior versions of hearing exhibits will be construed to be amended to refer to the latest filed version of such testimony, unless otherwise specified. Although corresponding page and line references might be affected by such construction, corrected references will not be necessary so long as the original reference remains reasonably close to the new location of the referenced material.

¹¹ A calculation of the fourth business day prior to hearing shall exclude the first day of the hearing and include each of the four business days preceding the hearing. For example, if the first day of the hearing falls on a Monday, then the fourth business day prior to hearing is Tuesday of the preceding week.

¹² The Public Utilities Commission Administrative Hearings Section uses a web-based document sharing service, box.com. All parties must ensure they can access and use box.com. An email with more details will follow.

41. The parties are responsible for ensuring they and their witnesses have access to all pre-marked exhibits and are able to download and view documents from box.com during the hearing.

1. Assignment of Hearing Exhibit Number Blocks

42. Hearing exhibits shall be marked numerically and sequentially for identification by the filing parties within their respective blocks of numbers. In order to efficiently organize the numbering and preparation of exhibits for the hearing, all parties shall use a unified numbering system for all hearing exhibits. Parties should not duplicate hearing exhibits or attachments previously filed by another party.

43. The party initiating the proceeding is assigned hearing exhibit numbers 100 to 299.

44. Each intervening person or entity is assigned a block of 100 hearing exhibit numbers (*e.g.*, 300-399, 400-499, etc.) in the chronological order that notices of intervention by right and petitions for permissive intervention are filed, as reflected in the Commission's E-Filings System. As a result, the first person or entity noticing an intervention by right or requesting permissive intervention is assigned hearing exhibit numbers from 300 to 399, the second person or entity is assigned hearing exhibit numbers from 400 to 499, etc. Parties shall rely upon the Commission's E-Filings System to determine sequencing of requests for intervention (*i.e.*, without regard to whether or when the interventions were granted). To determine the sequencing and avoid duplicative use of blocks, parties are encouraged to confer as needed.

2. Identification of Filing Requirements for Hearing Exhibits

45. In addition to other requirements of the Commission's Rules of Practice and Procedure (*e.g.*, Rule 1202 regarding pre-filed testimony), all pre-filed hearing exhibits shall be marked for identification and filed in accordance with this Interim Decision.¹³

46. Parties must mark all hearing exhibits for identification in sequential order, using hearing exhibit numbers within their assigned hearing exhibit number block. Each type of a witness's testimony, including any attachments, (*e.g.*, direct, answer, rebuttal, cross-answer, and supplemental) shall be marked with one hearing exhibit number.¹⁴ Even if comprised of multiple electronic documents, the testimony and attachments will be one hearing exhibit.¹⁵

47. Parties should not duplicate hearing exhibits or attachments previously filed by another party. At the hearing, any party may sponsor an exhibit that was pre-filed by another party.

48. The title of all pre-filed written testimony should include the type of testimony and the name of the witness. For example, if Hearing Exhibit 100 is the direct testimony of witness John J. Doe, the following title should be used: "Hearing Exhibit 100, Direct Testimony of John J. Doe."

49. Anything accompanying pre-filed written testimony within a hearing exhibit (*e.g.*, exhibits, appendices, attachments, or attachments to filing) shall be referred to as an "attachment" to the testimony and identified by the hearing exhibit number reference, the witness's initials, and

¹³ In order to minimize the size and allow electronic text searches of the PDF files, versions filed in PDF format should be generated from the native executable electronic file format when possible.

¹⁴ Each type of testimony should be identified with a different hearing exhibit number. For example, John J. Doe's direct testimony may be Hearing Exhibit 100 and his rebuttal testimony may be Hearing Exhibit 105.

¹⁵ While marked for identification with one hearing exhibit number, the testimony and each attachment should be filed in compliance with Rule 1202, which provides that the primary document and each secondary document must be separately uploaded in the Commission's E-Filings system.

a number sequence. For example, if the party assigned to block 300 files answer testimony of Albert B. Cooke, which includes a table as Attachment ABC-1, then the title of the table will be “Hearing Exhibit 300, Attachment ABC-1.” The attachment should not be referred to as Exhibit ABC-1 or Appendix A.

50. When filing hearing exhibits in the Commission’s E-Filings System, parties must title the exhibits to match the title of the hearing exhibit but, the title must not be in all uppercase format. All exhibit titles entered into the E-Filing System must start with “Hearing Exhibit XXX.” Building on the above examples, John J. Doe’s Direct Testimony should be titled “Hearing Exhibit 100, Direct Testimony of John J. Doe” when filing in the Commission’s E-Filing System, and the first attachment to John J. Doe’s testimony should be titled “Hearing Exhibit 100, Attachment JJD-1” when filing.

3. Formatting of Hearing Exhibits

51. The first page of all hearing exhibits shall be page 1, with each additional page numbered in succession. For example, the cover page shall be page 1, and all following pages shall be numbered sequentially, including executive summaries, tables of contents, and lists of attachments. This will facilitate electronic navigation during the hearing.

52. There shall be only one page number shown on each page of the hearing exhibits. Page numbers should be included in the header of each page-numbered hearing exhibit. The top line of the header shall include the title of the document (*e.g.*, Hearing Exhibit 400, Answer Testimony of Albert B. Cooke or Hearing Exhibit 400, Attachment ABC-1).

53. A person may modify formatting options in revisions to filed documents in order to minimize the resulting impact to page and line references (*e.g.*, widen a paragraph margin to insert a word).

54. Titles entered into the Commission's E-Filings System should be in title format and must not be in all capitals.

4. Filing of Executable Attachments to Hearing Exhibits

55. Any spreadsheet filed as, or that is the basis for, an attachment to a hearing exhibit shall be filed in both .pdf format and in the native executable electronic file format (*e.g.*, .xlsx, .ods, .gsheet).

56. The title of the executable version filed shall mirror the title identifying the pre-filed version and include the word "Executable" after the hearing exhibit number. For example: Hearing Exhibit 300, Executable Attachment ABC-1, or Hearing Exhibit 400, Executable.

57. Parties are not required to: mark native executable hearing exhibits, including executable attachments thereto, for identification, paginate such executable exhibits, or file amended, modified, or corrected executable exhibits in redline/strikeout format.

5. Modifying, Amending, or Correcting a Previously Filed Hearing Exhibit on or Before the Deadline for Corrections

58. Should a party need to modify, amend, or correct a previously identified hearing exhibit on or before the ordered deadline for such changes, the following procedures shall be followed.

59. If the native executable electronic file format is not a spreadsheet, a complete revision including all changes in redline/strikeout format shall be filed.¹⁶ No modification, amendment, or correction shall be made to a filed hearing exhibit without indicating a new revision number, as described below. The same title shall be used for the title as the original, except that a revision number reference must be added to give notice of the change.

60. For example, if Hearing Exhibit 100, Direct Testimony of John J. Doe changed, it would be filed as Hearing Exhibit 100, Direct Testimony of John J. Doe, Rev. 1 containing redlined modifications to the original version.¹⁷ If an additional revision is later filed, it would be filed as Hearing Exhibit 100, Direct Testimony of John J. Doe, Rev. 2 and would contain all redlined modifications as compared to the original version (*i.e.*, not only as compared to Rev. 1). For Rev. 2 and all subsequent revisions, the filing shall also include a notice identifying changes in each revision from the most recent previous revision. Further, the title of any revision must not contain the word “corrected” even if the revision corrects the prior filing.

61. If the native executable electronic file format is a spreadsheet (*e.g.*, .xlsx, .xls, .ods, .gsheet), a complete revision including all changes shall be filed. The changes do *not* need to be in redline/strikeout format. No modification, amendment, or correction shall be made to a filed hearing exhibit without indicating a new revision number (*e.g.*, Rev. 1). The same title shall be used for the title as the original, except that a revision number reference must be added to give notice of the change. The revision pages shall also include an additional notice attachment identifying changes in each revision from the most recent previous revision. Additionally, a complete revision of the executable spreadsheet, including all changes, shall be filed.

¹⁶ Filing a “clean” version is not necessary and is discouraged.

¹⁷ “Rev.” stands for revision.

62. The most recent revision of a hearing exhibit shall be the version utilized during the evidentiary hearing. References in testimony to obsolete versions of other testimonies will be construed to be amended to refer to the latest filed version of such testimony, unless otherwise specified. Although corresponding page and line references might be affected by such construction, corrected references will not be necessary so long as the original reference remains reasonably close to the new location of the referenced material.

6. Modifying, Amending, or Correcting a Previously Filed Hearing Exhibit After the Deadline for Corrections

63. Should a party need to modify, amend, or correct a previously identified hearing exhibit after the earlier of the ordered deadline for such changes or the fourth business day prior to the hearing, the following procedures shall be followed to upload them into the party's designated box.com folder rather than filing through the Commission's E-Filings System.

64. If the native executable electronic file format is not a spreadsheet, all changes should be reflected on replacement pages only in redline/strikeout format that will be: (a) marked for identification with a hearing exhibit number within the party's assigned exhibit number block in accordance with the procedures in this Decision; and (b) uploaded into the party's designated box.com folder prior to use of the exhibit during the hearing.¹⁸ The replacement pages shall also include an additional notice attachment identifying changes in each revision from the most recent previous revision.

65. If the native executable electronic file format is a spreadsheet (*e.g.*, .xlsx, .uos, .gsheet), all changes shall be reflected on only replacement pages that will be: (a) marked for identification with a hearing exhibit number within the party's assigned exhibit number block in

¹⁸ Filing a "clean" version is not necessary and is discouraged.

accordance with the procedures in this Decision; and (b) uploaded into the party's designated box.com folder prior to use of the exhibit during the hearing. The changes do not need to be in redline/strikeout format. The revision pages shall also include an additional notice attachment identifying changes in each revision from the most recent previous revision. Additionally, a complete revision of the executable spreadsheet, including all changes, shall be filed in accordance with Section I.D.5 above.

66. If the changes are permitted, and assuming the original filing is otherwise admissible, both hearing exhibits would be admitted into evidence during the hearing with the latter replacement pages superseding and prevailing to the extent of conflict in the previous revision.

67. References to superseded portions of a hearing exhibit will be construed to be amended to refer to the replacement pages, unless otherwise specified. Although corresponding page and line references might be affected by such construction, corrected references will not be necessary so long as the original reference remains reasonably close to the new location of the referenced material. For example, a reference in answer testimony to page 10, line 5 of a witness's direct testimony need not be revised if page 10 of the direct testimony is replaced, so long as the material that was originally at page 10 and line 5 remains reasonably close.

7. Procedures for Confidentiality

68. Any pre-filed hearing exhibit (including attachments) filed in accordance with the Standards of Conduct in the Commission's Rules of Practice and Procedure containing confidential information shall be pre-marked for identification by the same hearing exhibit number as the redacted public version of the hearing exhibit but shall be designated with a "C" following the number of the hearing exhibit or attachment.

69. For example, a witness's pre-filed written testimony might be identified as Hearing Exhibit 100, Direct Testimony of John J. Doe. If portions of the testimony in Hearing Exhibit 100, Direct Testimony of John J. Doe are claimed to be confidential, the confidential version of Hearing Exhibit 100 would be filed in accordance with the Standards of Conduct and identified as Hearing Exhibit 100C, Confidential Direct Testimony of John J. Doe. In this confidential version of the hearing exhibit, only the material that is highly confidential will be redacted. In addition, Hearing Exhibit 100, Direct Testimony of John J. Doe would remain in the public record (redacted to exclude confidential and highly confidential material).

70. Further, if portions of Hearing Exhibit 100, Direct Testimony of John J. Doe, Attachment JJD-1 are claimed to be confidential, a confidential version of Hearing Exhibit 100, Attachment JJD-1 would be filed in accordance with the Standards of Conduct and identified as Hearing Exhibit 100, Confidential Attachment JJD-1C. In this confidential version of the attachment, only the material that is highly confidential will be redacted. In addition, Hearing Exhibit 100, Attachment JJD-1 would remain in the public record (redacted to exclude confidential and highly confidential material).

71. Likewise, any pre-filed hearing exhibit (including attachments) containing highly confidential information shall be pre-marked for identification by the same hearing exhibit number as the redacted public version of the hearing exhibit but shall be designated with a "HC" following the number of the hearing exhibit or attachment.

II. ORDER

A. The Commission Orders That:

1. The Motion to Intervene Permissively filed by Climax Molybdenum Company (Climax) on November 30, 2022, is granted.

2. The Motion to Permissively Intervene and Request for Hearing filed by Colorado Energy Consumers (CEC) on November 30, 2022, is granted.

3. The Motion to Intervene filed by Natural Resources Defense Council and Sierra Club (Conservation Coalition) on November 30, 2022, is granted.

4. Consistent with the discussion above, the following are parties to this Proceeding: Public Service Company of Colorado (Public Service), Staff of the Public Utilities Commission, the Office of Utility Consumer Advocate, Climax, CEC, and the Conservation Coalition.

5. We adopt the filing deadlines set forth in the Unopposed Motion to Approve Procedural Schedule and for a Final Commission Decision on or Before April 28, 2023 and Request for Waiver of Response Time (Unopposed Motion) filed by Public Service on December 8, 2023, consistent with the discussion above.

6. Consistent with the discussion above, an evidentiary hearing is scheduled as follows:

DATES: March 20, 2023, through March 22, 2023

TIMES: 9:00 A.M. until concluded, but no later than 5:00 p.m. on each day except March 22, 2023, in which the hearing will begin at 1:00 p.m.

LOCATION: Commission Hearing Room (Webcast)

7. Consistent with the discussion above, an alternative evidentiary hearing is reserved as follows:

DATES: April 6, 2023, through April 7, 2023

TIMES: 9:00 A.M. until concluded, but no later than 5:00 p.m.

LOCATION: Commission Hearing Room (Webcast)

8. We decline to approve Public Service's request for a Commission decision on or before April 28, 2023, consistent with the discussion above.

9. The parties' discovery procedures set forth in the Unopposed Motion are adopted.

10. Public Service's request to waive response time to the Unopposed Motion is granted.

11. Discovery disputes and motions for extraordinary protection are referred to an Administrative Law Judge.

12. The Application for Approval of its Cost Recovery Proposal Associated with the Early Retirements of Coal Generation Assets Craig 2, Hayden 1 and Hayden 2, and the retiring coal portion of Pawnee that Public Service filed on November 16, 2022, was deemed complete on December 15, 2022, by operation of Rule 1303(c)(III) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, for purposes of § 40-6-109.5, C.R.S.

13. The deadline for a Commission decision is extended an additional 130 days, as permitted in § 40-6-109.5(1), C.R.S.

14. In addition to other requirements of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (*e.g.*, Rule 1202 regarding pre-filed testimony),

all pre-filed hearing exhibits shall be marked for identification and filed in accordance with this Decision,¹⁹ including the following:

- a. Any spreadsheet filed as, or that is the basis for, an attachment to a hearing exhibit shall be filed in both .pdf format and in the native executable electronic file format (*e.g.*, .xlsx, .ods, .gsheet).
- b. Within 14 days of the date of this Decision, Public Service shall revise and re-file its previously filed testimony, if necessary for such testimony to comply with the ordered procedures and the discussion above. For purposes of this Decision, any such filings shall be treated as the original filing of hearing exhibits.²⁰
- c. All corrections to any pre-filed hearing exhibits marked for identification shall be filed on or before the deadline for “Corrections to Pre-Filed Testimony and Exhibits” established in the procedural schedule, consistent with the discussion above.
- d. Any objections to the admissibility of any pre-filed hearing exhibits marked for identification (*e.g.*, authenticity) shall be filed by the deadline for “Prehearing Motions” established in the procedural schedule.

¹⁹ If the Commission’s E-Filings System does not accept the electronic format of any pre-filed hearing exhibit, an electronic copy must be filed with the Commission on a CD, DVD, or portable drive. If any such hearing exhibit is created from a spreadsheet, the native executable electronic file format must be filed simultaneously on the same CD, DVD, or portable drive.

²⁰ Compliance with this Decision may result in a change to pagination of prior versions of hearing exhibits. References in discovery requests and responses to prior versions of hearing exhibits will be construed to be amended to refer to the latest filed version of such testimony, unless otherwise specified. Although corresponding page and line references might be affected by such construction, corrected references will not be necessary so long as the original reference remains reasonably close to the new location of the referenced material.

15. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 14, 2022.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read 'G. Harris Adams'.

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners