

Decision No. C23-0246-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0141E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2021 ELECTRIC RESOURCE PLAN AND CLEAN ENERGY PLAN.

**INTERIM COMMISSION DECISION GRANTING
UNOPPOSED MOTION FOR PARTIAL WAIVER OF
RULES 3613(A) AND 3613(D)-(H) TO PROVIDE AN
EXTENSION OF TIME TO NOTIFY BIDDERS OF BIDS
ADVANCED TO COMPUTER-BASED MODELING AND
FILE ITS 120-DAY REPORT AND MOTION FOR WAIVER
OF RESPONSE TIME**

Mailed Date: April 13, 2023

Adopted Date: April 12, 2023

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission grants the Unopposed Motion for Partial Waiver of Rules 3613(a) and 3613(d)-(h) to Provide an Extension of Time to Notify Bidders of Bids Advanced to Computer-Based Modeling and File its 120-Day Report (Unopposed Motion) that Public Service Company of Colorado (Public Service or Company) filed on March 31, 2023.

B. Discussion

2. On August 3, 2022, the Commission issued Decision No. C22-0459 addressing Public Service's Application for Approval of the 2021 Electric Resource Plan (ERP) and Clean Energy Plan (CEP) and approving, in part, the Updated Non-Unanimous Partial Settlement Agreement (Phase I Decision). Among other things, the Phase I Decision directed Public Service

to issue Requests for Proposals (RFPs) for an all-source, competitive bidding process to meet its resource need.

3. On December 1, 2022, Public Service issued its 2022 All-Source RFPs, including a Company Ownership RFP, a Dispatchable Resources RFP, and a Renewable Resources RFP. Bids were due by March 1, 2023.¹ Public Service notes that it received nearly 1,000 potential bids in response to its RFPs, well over the approximately 430 bids received in the last 2018 All-Source Solicitation.²

4. Per Rule 3613 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3, the receipt of the bids sets the timeline for several Phase II events, including when the Company must notify bidders of whether their bids were advanced to computer-based modeling (45 days after receipt of bids, or April 15, 2023)³ and the filing of the 120-Day Report (120-days after the receipt of bids, or June 29, 2023).⁴

5. In the Unopposed Motion, the Company states that it is working diligently to review all bids. Due to the volume of bids and scope of review, however, the Company requests an additional 15 days to conduct eligibility reviews, due diligence, and economic screening, and then notify bidders of advancement to computer-based modeling. This would move Rule 3613(a)'s deadline to notify bidders of whether their bids were advanced to computer-based modeling from April 15, 2023, to May 1, 2023.⁵

¹ Unopposed Motion, p. 4.

² Unopposed Motion, pp 4-5.

³ Rule 3613(a). 45 days after March 1, 2023, is April 15, 2023, which falls on a Saturday. Thus, the deadline moves to Monday, April 17, 2023.

⁴ Rule 3613(d).

⁵ 15 days from April 15, 2023, is April 30, 2023, which falls on a Sunday. Thus, the deadline moves to Monday, May 1, 2023.

6. Similarly, Public Service argues that because of the “unprecedented” response to the competitive solicitation, there is insufficient time to review all bids received, perform the necessary due diligence, and develop the portfolios and other information required by the Phase I Decision for the 120-Day Report. The Company states that the number of bids in this Proceeding is over double the response to the last Phase II competitive solicitation where the Company also needed extensions of time.⁶ Accordingly, the Company requests an additional 50 days to file the 120-Day Report. This would move Rule 3613(d)’s deadline from June 29, 2023, to August 18, 2023.

7. In addition to the requested partial waivers of Rule 3613(a) (to notify bidders) and Rule 3613(d) (to file the 120-Day Report), Public Service also requests partial waivers of Rules 3613(e)-(h). Public Service notes that the deadlines in these Rules are keyed off the filing date of the 120-Day Report. These Rules are summarized below:

- Rule 3613(e): The Independent Evaluator (IE) files its report regarding, among other things, whether the Company conducted a fair bid solicitation and evaluation process 30 days after the 120-Day Report.
- Rule 3613(f): Intervenors’ file comments within 45 days of the 120-Day Report.
- Rule 3613(g): The Company files responsive comments 60 days after the 120-Day Report.
- Rule 3613(h): The Commission’s Phase II Decision is due within 90 days after the 120-Day Report.

8. More generally, Public Service seems to request that all subsequent deadlines that flow from the filing of the 120-Day Report be adjusted accordingly.⁷

9. Public Service argues that no party will be unfairly prejudiced by delaying the timeline pursuant to the Unopposed Motion because all parties will maintain the same amount of

⁶ Unopposed Motion, p. 6.

⁷ Unopposed Motion, p. 11.

time to comment and respond to the 120-Day Report as provided under the Rules. The Company asserts that its request simply shifts the timeline for the Phase II process with this limited extension request. The Company notes that through its conferral with intervenors, Public Service has agreed to provide bid data regarding projects with in-service dates in 2023 through 2025 in its Supplemental Direct Testimony in Proceeding No. 23A-0046E, and the Company will model a sensitivity with the PPA extensions unlocked and provide the results of that sensitivity in its 120-Day Report. In addition, the Company commits to grant Project Developers an extension of the as-bid commercial operation dates of the projects, if requested and under certain conditions.⁸

10. Finally, Public Service asks that the Commission waive response time to the Unopposed Motion. Public Service states that it conferred with all parties to this Proceeding, and that no party opposes the Company's requests.⁹ Likewise, the Company states that it conferred with the IE, and the IE supports the extension.¹⁰

C. Findings and Conclusions

11. The Commission grants the Unopposed Motion. Given the robust response to the Company's RFPs and the numerous requirements of Phase II, the Company has established good cause for a 15-day extension to notify bidders of bid advancement per of Rule 3613(a) and a 50-day extension to file the 120-Day Report per Rule 3613(d). While we agree that there is good cause for the extensions requested in the Unopposed Motion, the Commission would be concerned if there are any further requests for extensions. We are mindful that Public Service is to file its Pueblo Just Transition Plan no later than June 1, 2024, and will file its next ERP under Rule 3601 no later

⁸ Unopposed Motion, pp. 9-10.

⁹ Unopposed Motion, pp. 2-3.

¹⁰ Unopposed Motion, p. 7.

than October 31, 2026.¹¹ Further delays in this Proceeding might complicate the Pueblo Just Transition Plan and the 2026 ERP. We anticipate that no further requests for extension will be necessary such that these critical timelines can be met.

12. In accordance with the extension of the deadlines set forth in Rule 3613(a) and Rule 3613(d), we grant Public Service's related request for partial waivers of Rules 3613(e)-(h) as well as the Company's more general request for extensions of all deadlines that flow from the filing of the 120-Day Report. For clarity, any deadline that flows from the bidder notification per Rule 3613(a) or the 120-Day Report per Rule 3613(d) shall be adjusted pursuant to the extensions granted in this Decision. This includes those deadlines that are not set forth in the Commission's Rules. For example, the deadline for the Phase II emission verification report from the Colorado Department of Public Health and Environment (CDPHE) and the deadline for the Company to initiate the Performance Incentive Mechanism (PIM) stakeholder process shall be adjusted pursuant to the extensions granted in this Decision.¹²

13. Finally, pursuant to Rule 1308(c) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, the Commission grants the Company's request to waive response time to the Unopposed Motion.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Motion for Partial Waiver of Rules 3613(a) and 3613(d)-(h) to Provide an Extension of Time to Notify Bidders of Bids Advanced to Computer-Based Modeling

¹¹ Phase I Decision, pp. 40-42; 157-58.

¹² CDPHE files its Phase II emissions verification report 30 days after the 120-Day Report. (*See* Phase I Decision, ¶ 462). The Company initiates the PIM stakeholder process 15 days after the filing of the 120-Day Report and will file a PIM proposal 60 days after the 120-Day Report. (Phase I Decision, ¶¶ 384, 389).

and File its 120-Day Report (Unopposed Motion) filed by Public Service Company of Colorado on March 31, 2023, is granted, consistent with the discussion above.

- 2. The request to waive response time to the Unopposed Motion is granted.
- 3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
APRIL 12, 2023.**

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners

ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director