

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0563E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONVERSION OF PAWNEE GENERATING STATION FROM COAL OPERATIONS TO NATURAL GAS OPERATIONS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
SCHEDULING HEARING AND ESTABLISHING
DEADLINES AND PROCEDURES**

Mailed Date: June 29, 2023

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I. STATEMENT, SUMMARY, AND BACKGROUND

A. Summary

1. This Decision approves the proposed procedural schedule that Public Service Company of Colorado (Public Service or the Company) filed on June 22, 2023, schedules a hybrid evidentiary hearing for November 7 and 9, 2023; and establishes deadlines and procedures relating to the evidentiary hearing.

B. Procedural History¹

2. On December 20, 2022, Public Service filed the above-captioned Application (Application) with attachments seeking the Commission to grant a Certificate of Public Convenience and Necessity to convert its Pawnee Generating Station from coal operations to natural gas operations. Public Service also filed a Motion for Leave to File Supplemental Direct Testimony (Supplemental Direct Motion) seeking leave to file additional testimony in support of the approval of the Application.

3. In its Application, Public Service waived the statutory deadline for a final Commission decision to issue per § 40-6-109.5, C.R.S.²

4. On December 22, 2022, the Commission provided public notice of the Application and established intervention deadlines.³

5. On February 23, 2023, the Commission set this matter for a hearing; granted Public Service's request to file Supplemental Direct Testimony (by May 15, 2023); addressed Interventions; and acknowledged Public Service's waiver of the statutory deadline for a final Commission decision to issue, per § 40-6-109.5, C.R.S.⁴

6. In addition to Public Service, the following entities are parties to this Proceeding: Climax Molybdenum Company; Natural Resources Defense Council and Sierra Club (collectively, the Coalition); Staff of the Colorado Public Utilities Commission (Staff); and the Colorado Office of the Utility Consumer Advocate (UCA).⁵

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

² Application at 2.

³ Notice of Application Filed on December 22, 2022

⁴ Decision No. C23-0130 at 8 (mailed February 23, 2023).

⁵ *Id.*

7. On May 15, 2023, Public Service filed its Supplemental Direct Testimony.

8. On June 6, 2023, after reviewing the Company’s Supplemental Direct Testimony, the Commission found good cause to refer this matter to an administrative law judge (ALJ) and did so.⁶ The Commission noted several items relevant to the potential procedural schedule or substance of the evidence the parties will present in this Proceeding. First, the Commission stated that it is “interested in the parties addressing the establishment of the correct cost baseline for a potential PIM that would not result in rewarding Public Service for cost savings beginning from a point substantially higher than the previously presented cost estimates relied on by the Commission in its Phase I Decision [in Proceeding No. 21A-0141E].”⁷ Second, the Commission noted that it sees “potential benefits in the ALJ adopting a procedural schedule that may appropriately enable parties to raise information in the 120-Day Report filed in Proceeding No. 21A-0141E in the presentation of their cases this proceeding.”⁸ And, third, the Commission stated that it is “interested in the parties examining the issues surrounding the dependability and use of costs estimates of utility projects relied upon in an electric resource plan proceeding, in both Phase I and Phase II, as well as in follow-on proceedings, such as this Application seeking a CPCN for the Brush Coal Plant conversion” and that it “welcome[s] party input in avoiding any potential for “bait and switch” in cost estimates over time.”⁹

9. On June 22, 2023, Public Service filed an Unopposed Motion to Approve Procedural Schedule, Set a Hybrid hearing and For Waiver of Response Time (Motion).

⁶ Decision No. C23-0375-I at 8 (mailed June 6, 2023)

⁷ *Id.* at 7.

⁸ *Id.*

⁹ *Id.* The Commission also explained that winning bids to a competitive solicitation in an electric resource plan result in contracts with third parties who cannot double the price of their offers at a later date without contractual consequences, unlike utility projects, and that the Commission requires accurate information when making resource decisions. *Id.*

II. FINDINGS AND CONCLUSIONS

10. The Motion states that all parties support the proposed procedural schedule in therein, rendering the Motion unopposed.¹⁰ Because the Motion is unopposed, the ALJ finds good cause to waive the response time to it, and does so.¹¹

11. The Motion proposes the procedural schedule in the below table, with the evidentiary hearing held as a hybrid hearing to accommodate in-person and remote appearances.

Activity	Proposed Dates/Deadline
Answer Testimony	September 8, 2023
Rebuttal & Cross-Answer Testimony	October 11, 2023
Corrections to Pre-Filed Testimony and Exhibits	October 18, 2023
Prehearing Motions	October 25, 2023
Stipulations and Settlement Agreements	October 26, 2023
Hearing Exhibit and Witness Lists and Cross Examination Matrix	November 1, 2023
Evidentiary Hearing	November 7 and 9, 2023
Statements of Position	December 7, 2023
Requested Deadline for Commission Decision	February 19, 2024 ¹²

12. The Motion indicates that the parties do not seek to deviate from the Commission's Rules on discovery procedures.¹³

¹⁰ Motion at 1-2.

¹¹ See Rule 1401(b), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

¹² Motion at 3.

¹³ *Id.*

13. The proposed schedule accommodates the Commission's desire for the parties to address the Company's 120-day report in their presentations and allows the parties enough time to prepare for a hearing. The ALJ finds that the proposed schedule is reasonable and appropriate. Given the proximity of the deadline for prehearing motions to the hearing date, the ALJ will establish a seven-day response time for prehearing motions. The parties do not propose a deadline for settlement testimony and the ALJ establishes none, but notes that if a settlement agreement is filed and the ALJ finds that it would be helpful for the parties to file settlement testimony, the approved procedural schedule may be modified to accommodate settlement testimony. And, while the ALJ appreciates Public Service's request that a final Commission Decision issue by February 19, 2024, the ALJ can make no guarantees that this deadline will be met. That said, the ALJ will endeavor to issue a recommended decision as quickly as possible. For all these reasons, except for the proposed decision deadline, the ALJ grants the Motion and approves the proposed procedural schedule, including the request to hold a hybrid hearing.

14. In approving the proposed schedule, the ALJ expects the parties to make best efforts to ensure their evidentiary presentations address the items in which the Commission expressed interest.¹⁴

15. Because the hearing will be hybrid, the ALJ expects that at least one party will appear in person for the hearing. The parties are required to confer with each other on or by October 26, 2023 to confirm that at least one party will appear in person for the hearing. If the parties conclude that none of them will appear in person, Public Service must make a filing on or by October 27, 2023 indicating that no party will appear in person. In such a circumstance, the hearing will be converted to a fully remote evidentiary hearing.

¹⁴ *Infra*, ¶ 8.

16. Attachment A hereto includes important technical information and requirements to facilitate accommodating remote hearing participation. Persons wishing to observe but not participate in the hearing are encouraged to observe the hearing via the Commission's webcast, rather than join the Zoom hearing.¹⁵ This will help minimize background noise and avoid issues that may arise should the ALJ need to hold confidential or highly confidential hearing session.

17. 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. This has 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 public version of confidential or highly confidential exhibits.

18. The parties must take extra care in reviewing Attachment B alongside their exhibits *before filing them* to ensure that they comply with each and every requirement in Attachment B. It is the parties' responsibility, not Commission support staff's, to ensure that exhibits are correctly formatted, marked, and filed.

¹⁵ Parties wishing to observe the hearing via webcast may do so by going to the following link: <https://puc.colorado.gov/webcasts> and selecting the assigned hearing room's webcast. The Commission's public calendar will include information on the assigned hearing room and may be found at: <https://puc.colorado.gov/>, under the "Calendar of Events."

19. 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.¹⁶ Counsel and the parties are responsible for ensuring that their witnesses receive the Zoom information needed to join the hearing.

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

III. **ORDER**

A. It Is Ordered That:

1. Consistent with the above discussion, the response time to Public Service Company of Colorado's (Public Service) Unopposed Motion to Approve Procedural Schedule, Set a Hybrid Hearing and For Waiver of Response Time filed June 22, 2023 is waived, and the proposed procedural schedule is approved consistent with the above discussion.

2. A hybrid evidentiary hearing on the above-captioned Application is scheduled as follows:

DATES: November 7 and 9, 2023

TIMES: 9:00 a.m. each day

PLACE: In-person: Commission Hearing Room, 1560 Broadway, Suite 250
Denver, Colorado

By video-conference using Zoom.

¹⁶ 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.

3. 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.

4. All parties must comply with the requirements in Attachments A and B to this Decision, which are incorporated into this Decision.

5. 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>.

6. **Answer Testimony Deadline.** Interveners' answer testimony must be filed and served by September 8, 2023.

7. **Rebuttal and Cross-Answer Testimony Deadline.** Public Service's rebuttal testimony, and Interveners' cross-answer testimony must be filed and served by October 11, 2023.

8. **Deadline for Non-Testimonial Hearing Exhibits.** By October 18, 2023, 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. Any party may use any other party's hearing exhibits during the course of the hearing and should not file them separately.

9. **Corrections, Modifications, and Amendments to Testimonial Exhibits.**

a. To allow enough time for staff to create and circulate the hyperlinked spreadsheet that will be used during the hearing to present 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) on or by October 18, 2023. The parties must review the hyperlinked spreadsheet that will be used during the hearing to present exhibits to ensure that it includes all the exhibits that the parties intend to offer into evidence during the hearing. October 18, 2023 is also the deadline to file *final versions of all exhibits*, as referenced in Attachment B hereto. Such filings must comply with the specific requirements in Attachment B.

b. 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.

10. **Deadlines for Prehearing Motions and Responses Thereto.** The parties must file and serve any prehearing motions by October 25, 2023; responses to prehearing motions must be filed by November 1, 2023.

11. **Deadline for Stipulations and Settlement Agreements.** The parties must file and serve any stipulations and settlement agreements by October 26, 2023.

12. **Deadline to Confer and Report if No Party Will Appear in Person.** The parties must confer with each other on or by October 26, 2023 to confirm that at least one party will appear in person at the evidentiary hearing. If the parties conclude that none of them will appear in person, Public Service must make a filing on or by October 27, 2023 indicating that no party will appear in person.

13. **Deadline for Hearing Exhibit and Witness Lists, and Joint Witness Examination Matrix.** By November 1, 2023, 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 number, the full title of each hearing exhibit, and include a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing. Describing an exhibit solely by identifying the exhibit number **does not meet** this requirement (*e.g.*, describing it as "Hearing Exhibit 100" without information as to substantive nature or content of the exhibit). Also, by November 1, 2023, 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.

14. **Deadline for Statements of Position.** In lieu of a verbal closing argument, the parties may submit written statements of position. Any party wishing to do so must file their statement of position by December 7, 2023.

15. **Hearing Exhibit Number Block Assignments.** In order 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 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
Natural Resources Defense Council and the Sierra Club	300 to 499
Office of the Utility Consumer Advocate	500 to 599
Climax Molybdenum Company	600 to 699
Trial Staff of the Colorado Public Utilities Commission	700 to 799

16. 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, *etc.*). Hearing Exhibit 800 is reserved for the hyperlinked spreadsheet that will be used during the hearing to present evidence.

17. 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

Rebecca E. White,
Director