

Decision No. R23-0542-I

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
MODIFYING PROCEDURAL SCHEDULE**

Mailed Date: August 15, 2023

I. STATEMENT, SUMMARY, AND BACKGROUND

A. Summary

1. This Decision grants the Unopposed Motion to Approve Revised Procedural Schedule and For Waiver of Response Time (Motion) that Public Service Company of Colorado (Public Service or the Company) filed on August 10, 2023.

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.

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

3. On June 6, 2023, the Commission referred this matter to an administrative law judge (ALJ) for disposition.² In doing so, 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 (120-Day Report) in the presentation of their cases this proceeding.”³

4. On June 29, 2023, the ALJ scheduled an evidentiary hearing and established a procedural schedule enabling parties to include the 120-Day Report in their presentations here.⁴ As relevant, the following deadlines are included in that procedural schedule: a September 8, 2023 deadline to file answer testimony; an October 11, 2023 deadline to file rebuttal and cross-answer testimony; and an October 18, 2023 deadline to file non-testimonial exhibits and corrected testimonial exhibits and attachments thereto.⁵

5. 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).

6. On August 10, 2023, the Company filed the Motion.

II. **FINDINGS AND CONCLUSIONS**

7. The Motion states that Public Service conferred with the parties and that no party objects to the relief sought therein.⁶ Since the Motion is unopposed, Public Service requests that

² Decision No. C23-0375-I at 8 (mailed June 6, 2023)

³ *Id.*

⁴ Decision No. R23-0431-I (mailed June 29, 2023).

⁵ Decision No. R23-0431-I at 7-8.

⁶ Motion at 1-2.

the response time to it be waived. Because the Motion is unopposed, the ALJ finds good cause to waive the response time to it and does so.⁷

8. The Motion explains that the procedural schedule was predicated on the expectation that the Company would file its 120-Day Report by August 16, 2023.⁸ But, on August 8, 2023, the Commission granted Public Service an extension of time to make this filing to September 11, 2023.⁹ The Motion states that this extension requires that several deadlines established in this Proceeding be modified so that the parties have adequate time to review the same and address the 120-Day Report in their case presentations.

9. The parties have agreed that they can accommodate the following changes to the established procedural schedule in this case:

Event	Existing Deadlines	Suggested Deadlines
Answer Testimony	September 8, 2023	September 27, 2023
Rebuttal and Cross-Answer Testimony	October 11, 2023	October 18, 2023
Non-Testimonial Exhibits and Corrections to Testimony	October 18, 2023	October 20, 2023 ¹⁰

⁷ See Rule 1401(b), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁸ Motion at 3.

⁹ *Id.* citing Decision No. C23-0522-I in Proceeding No. 21A-0141E.

¹⁰ *Id.* at 4.

10. The Motion states that the parties agree that the above proposed changes allow sufficient time to address the 120-Day Report while maintaining the current hearing schedule.¹¹ To accommodate the above changes, the Company has also agreed to a five calendar day discovery response time between September 11, 2023 and September 22, 2023, on discovery requests specifically related to the Pawnee conversion within the 120-Day Report so that responses can be included in answer testimony.¹² The Motion notes that this agreement is not precedent setting, and that the Company does not waive its rights to object to discovery.

11. The ALJ finds that the proposed changes accommodate the Commission's desire for the parties to address the Company's 120-day report in their presentations without impacting the parties' ability to prepare for the scheduled hearing. The discovery agreements facilitate this. For these reasons, the ALJ finds that the Motion states good cause to modify the procedural schedule and suggests reasonable modifications. For these reasons, the ALJ grants the Motion.

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 Revised Procedural Schedule and For Waiver of Response Time (Motion) filed on August 10, 2023 is waived, and the Motion is granted.

¹¹ *Id.*

¹² *Id.*

2. Unless specifically modified by this Decision, no other deadlines or requirements in Decision No. R23-0431-I or Attachments A and B thereto are impacted by this Decision.

3. **Answer Testimony Deadline.** Interveners' answer testimony must be filed and served by September 27, 2023.

4. **Rebuttal and Cross-Answer Testimony Deadline.** Public Service's rebuttal testimony, and Interveners' cross-answer testimony must be filed and served by October 18, 2023.

5. **Deadline for Non-Testimonial Hearing Exhibits.** By October 20, 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.

6. **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) on or by October 20, 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 20, 2023 is also the deadline to file *final versions of all exhibits*, as referenced in Attachment B to Decision No. R23-0431-I, which is modified to reflect this change. Such filings must comply with the specific requirements in Attachment B.

7. 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