

Decision No. C23-0522-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(D)-(H) TO PROVIDE AN ADDITIONAL
EXTENSION TO FILE THE 120-DAY REPORT AND
REQUEST FOR SHORTENED RESPONSE TIME AND
DIRECTING PUBLIC SERVICE TO FILE AN UPDATE
REGARDING DEFERRED TAX ASSETS**

Mailed Date: August 8, 2023

Adopted Date: August 2, 2023

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission grants the Unopposed Motion for Partial Waiver of Rules 3613(d)-(h) to Provide an Additional Extension of Time to File the 120-Day Report and Request for Shortened Response Time (Motion for Second Extension) that Public Service Company of Colorado (Public Service or Company) filed on July 27, 2023.

2. In connection with the extension of the deadline for the 120-Day Report, we direct Public Service to file by August 16, 2023, an update regarding the deferred tax asset (DTA) issues, including the results of the conferral process, the DTA forecast, if available, and the planned treatment of DTA in the Phase II modeling.

B. Background

3. 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. The Phase I Decision also set forth certain filing requirements addressing the DTA levels associated with Company-owned resources.¹

4. On December 1, 2022, Public Service issued its 2022 All-Source RFPs. Bids were due by March 1, 2023.

5. 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 file the 120-Day Report.² The 120-Day Report, in turn, sets deadlines for several other filings, including the report from the independent evaluator, the Phase II comments from the intervenors, and the Commission's Phase II decision.³

6. On March 31, 2023, Public Service filed an unopposed motion to, among other things, extend the time to file the 120-Day Report. In this initial motion for extension, Public Service requested an additional 50 days to file the 120-Day Report, moving the deadline from June 29, 2023, to August 18, 2023. By Decision No. C23-0246-I,⁴ the Commission granted the

¹ Phase I Decision, pp. 114-15.

² Rule 3613(d).

³ See Rule 3613(e)-(h).

⁴ Issued on April 13, 2023

Company's motion and extended the deadline for the 120-Day Report as well as all associated deadlines.

7. Public Service filed the Motion for Second Extension on July 27, 2023, requesting a 24-day extension of time within which to file the 120-Day Report. On July 28, 2023, Colorado Independent Energy Association (CIEA), Colorado Solar and Storage Association (COSSA), Solar Energy Industries Association (SEIA), Interwest Energy Alliance (Interwest), and Onward Energy Management LLC (Onward) (collectively the Joint independent power producer (IPP) Interests) jointly filed a Response to the Motion for Second Extension (Response).

C. Motion for Second Extension

8. In the Motion for Second Extension, , the Company states that “the volume of bids advanced to computer-based modeling and unanticipated challenges with the EnCompass model” caused an approximate four-week delay in the development of initial portfolios.⁵ Specifically, Public Service states that it “encountered an instability problem with the model, which resulted in the inability of the model to solve for the myriad of variables and produce model outputs.”⁶ To resolve this issue, the Company consulted with an EnCompass vendor. While Public Service is confident that the model is now working correctly, the issue hindered the Company's progress developing portfolios. Public Service states that this delay in turn “encroached on the time needed for our internal teams to perform the extensive reliability checks and transmission analysis on the various portfolios as well as time needed by the IE for its evaluations.”⁷ Public Service concludes that it will no longer be able to complete the 120-Day Report by the current deadline of August 18, 2023.

⁵ Motion for Second Extension, p. 6.

⁶ *Id.*

⁷ *Id.* at 7.

9. The Company argues that it does not make the request for another extension lightly and that it “extensively evaluated ways to avoid requiring this extension.”⁸ Even though Public Service states that it understands the urgency of completing the 120-Day Report, it asserts that this must be weighed against the need to provide the Commission and parties with modeling and analysis that is transparent, cogent, and digestible.

10. Ultimately, the Company requests an additional 24 days to file the 120-Day Report, which would move the deadline from August 18, 2023, to September 11, 2023, and a corresponding extension for all subsequent deadlines that flow from the 120-Day Report, including those set forth in Rules 3613(e)-(h).⁹ In connection with its requested extension of the deadlines set forth in Rule 3613, the Company requests that the Commission grant a partial waiver of Rules 3613(d)-(h). Public Service argues that this requested partial waiver does not unfairly prejudice any party because the Company’s request simply shifts the timeline for the Phase II process. All parties still have the same amount of time to comment and respond to the 120-Day Report as contemplated by Rules 3613(d)-(h).¹⁰

11. Public Service states that it conferred with all parties to this Proceeding and that the Motion for Second Extension is unopposed. Public Serve requests that the Commission shorten response time to the close of business on July 31, 2023.¹¹

⁸ *Id.*

⁹ Rule 3613(e)-(h) set deadlines that are keyed off the filing date of the 120-Day Report. For example, per Rule 3613(f), intervenors have 45 days after the filing of the 120-Day Report to file comments. Under Rule 3613(h), the Commission’s Phase II Decision is due within 90 days after the 120-Day Report.

¹⁰ Motion for Second Extension, p. 10.

¹¹ In the Motion for Second Extension, Public Service further notes that it will allow IPPs to have a similar extension of time. Public Service states that the Company will grant Project Developers an extension of as-bid commercial operation dates commensurate with the additional 24-day delay, under certain conditions. (Motion for Second Extension, p. 10).

D. Response from the Joint IPP Interests

12. In their Response, the Joint IPP Interests explain that they do not oppose the Motion for Second Extension, even though the delays are disappointing and difficult for the IPP community. The Joint IPP Interests state that “it is critically important that Public Service file an implementation report that both Public Service and the independent evaluator believe is complete, carefully presented, and defensible.”¹²

13. Although they do not oppose the Motion for Second Extension, the Joint IPP Interests argue that further delays impose a “significant burden on project developers, who must carry substantial costs in keeping their projects ready to proceed” per their bids.¹³ The Joint IPP Interests strongly urge the Commission to expedite the remainder of this Proceeding and to take all steps necessary to ensure that a final decision in Phase II is issued by the end of the year. The Joint IPP Interests indicate that this timeline is important to allow developers whose bids are selected to keep their projects on track for timely completion.¹⁴

E. Findings and Conclusions Regarding the Motion for Second Extension

14. We grant the Motion for Second Extension. While a further delay of Phase II is not ideal, Public Service asserts that it is simply unable to complete the 120-Day Report by the current deadline after unanticipated challenges with EnCompass caused an approximately four-week delay in developing the initial portfolios. Moreover, even though delays impose significant burdens on project developers, both the Company and the Joint IPP Interests agree about the importance of having a complete, cogent, and transparent 120-Day Report. It is significant that even with the additional 24-day extension, the Commission should be able to

¹² Response, p. 1.

¹³ *Id.* at 2.

¹⁴ *Id.*

issue a Phase II decision before the end of the year. Accordingly, we find that Public Service has established good cause for the 24-day extension.

15. In connection with the 24-day extension of time to file the 120-Day Report, we grant Public Service's request for partial waivers of Rules 3613(e)-(h) as well as the requested extensions of any subsequent deadlines that flow from the 120-Day Report that are not set forth in the Commission's Rules. Thus, any deadline that flows from the 120-Day Report shall be adjusted pursuant to the extension granted in this Decision. This includes 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.¹⁵

16. 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 for Second Exception.

F. DTA Filing Requirements

17. As referenced above, in our Phase I Decision we directed Public Service to submit a forecast of its DTA levels for the next ten years.¹⁶ We also directed the Company to confer with Staff on whether there is a modeling methodology that could evaluate DTA impacts on a project level, the intent being to find a methodology where DTA costs are assigned at the project level to accurately reflect where such costs originate.¹⁷

¹⁵ 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).

¹⁶ Phase I Decision, p. 115.

¹⁷ *Id.*

18. We reiterated these requirements in the Decision addressing Applications for Rehearing, Reargument, or Reconsideration of the Phase I Decision, expressly denying Public Service's requests to no longer require a DTA forecast or conferral with Staff.¹⁸ Instead, we directed Public Service to supplement the DTA forecast consistent with Staff's RRR Application to, among other things, address how the Inflation Reduction Act (IRA) impacts the Company's DTA forecast.¹⁹ Regarding the conferral on whether there is a modeling methodology that could evaluate DTA impacts on a project level, we required Staff and the Company to report to the Commission the results of the conferral.²⁰

19. On November 18, 2022, Public Service filed a Notice indicating it has been engaging with Staff on the DTA issue but that the Company needs more time. Public Service went on to file several more such notices. The last such notice was the Fifth Updated Notice that Public Service filed on March 3, 2023. The Fifth Updated Notice states that the "Company and Staff continue productive discussions on multiple DTA-related issues, including the ERP-related issues and tax credit transferability issues." Neither the Company nor Staff have made the required DTA filings.

20. Given that deadline for the 120-Day Report is extended from August 18, 2023, to September 11, 2023, we direct Public Service to address the DTA issues in the additional time it now has. Specifically, Public Service shall provide an update regarding the DTA issues by August 16, 2023. Notwithstanding the fact that the IRA might significantly impact the Company's expected DTA levels, there needs to be more transparency regarding the treatment of

¹⁸ Decision No. C22-0559, issued September 21, 2022, p. 25.

¹⁹ *Id.* at 25-26.

²⁰ *Id.* at 26.

DTA in the Phase II modeling, and the Company shall use the enlarged Phase II schedule to provide an update.

21. Specifically, the DTA update shall include a description of the conferral process that specifies the outcome of the conferral and whether the Company was able to reach consensus with Staff. If available, Public Service must also include the DTA forecast developed for Phase II. Finally, Public Service must expressly detail the Company's intended treatment of DTA levels in the modeling for Phase II, the underlying assumptions for this treatment, and whether there is consensus with Staff.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Motion for Partial Waiver of Rules 3613(d)-(h) to Provide an Additional Extension of Time to File the 120-Day Report and Request for Shortened Response Time (Motion for Second Extension) filed by Public Service Company of Colorado (Public Service) on July 27, 2023, is granted.

2. The request to shorten response time to the unopposed Motion for Second Extension is granted.

3. Given the extension of the time to file the 120-Day Report, Public Service shall file an update regarding the issues relating to deferred tax assets, consistent with the discussion above.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 2, 2023.**

(SEAL)



ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners