

Decision No. C23-0647-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,
IN PART, AND DENYING, IN PART, THE MOTION FOR PARTIAL
WAIVER OF RULES 3613(D)-(H) TO PROVIDE PHASE II PROCESS
MODIFICATIONS**

Mailed Date: September 27, 2023
Adopted Date: September 13, 2023

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission grants, in part, and denies, in part, the Joint Motion for Partial Waiver of Rules 3613(d)-(h) to Provide Phase II Process Modifications (Joint Motion for Third Extension) that Public Service Company of Colorado (Public Service or the Company), Trial Staff of the Colorado Public Utilities Commission (Staff), and the Independent Evaluator, Accion Group, LLC (IE) (collectively, the Joint Filers) filed on September 5, 2023. We adopt revised deadlines for Phase II that provide some additional time for the IE to file its report, for the intervening parties to submit their comments, and for Public Service to file its response comments. To help ensure that the Commission still has a reasonable opportunity to issue a Phase II decision by the end of the year, however, we decline to grant the full extensions of time that the Joint Motion for Third Extension requests.

B. Background

2. In the Joint Motion for Third Extension, the Joint Filers seek modifications to the Phase II procedural schedule, including that the Commission: (1) vacate the current September 11, 2023 deadline for the Company’s 120-Day Report and grant a seven-day extension until September 18, 2023, for the Company to file the 120-Day Report; (2) provide the IE with an additional eight days to file the IE Report; and (3) provide intervenors an additional seven days to file comments on the 120-Day Report (allowing a total comment period of 60 days from the filing of the report).

3. In the Joint Motion for Third Extension, Joint Filers propose the following schedule:

Procedural Activity	Current Date	Proposed New Date
120-Day Report	September 11, 2023	September 18, 2023
IE Report	October 11, 2023	October 26, 2023
Intervenor’s Comments	October 26, 2023	November 17, 2023
Company’s Response Comments	November 10, 2023	December 4, 2023
Commission Decision	December 11, 2023	January 11, 2024

4. Joint Filers state that the process has been far more complex than prior Phase II processes, with a solicitation that has resulted in over 1,000 submitted bids and the use of new modeling software, with “several gigawatts of new resources and billions in new clean energy-related investments across the State of Colorado.” The pleading argues that this complexity, in turn, drives the need for additional IE and intervenor time to prepare the IE Report

and comments respectively, and recognizes that the Commission may also need additional time to review the filings and report.

5. Joint Filers therefore seeks associated waivers of Commission rules to accommodate the proposed, updated schedule, and further that any subsequent deadlines that flow from the 120-Day report that are not set forth in Commission Rules (*i.e.*, 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) be adjusted accordingly.

6. On September 5, 2023, the Colorado Solar and Storage Association (COSSA) and the Solar Energy Industries Association (SEIA) (collectively, COSSA/SEIA), the Colorado Independent Energy Association, and Interwest Energy (collectively, Joint IPP Interests) filed their Response to the Joint Motion for Third Extension (Joint IPP Interests Response). Joint IPP Interests argue that this latest extension in the Joint Motion for Third Extension is not for the Company to complete its modeling, analysis, or the 120-Day Report, but instead “for the benefit of the IE and Staff, as well as a significant extension for Public Service’s own reply comments.”¹ The Joint IPP Interests request that the Commission retain the current Phase II deadlines.

7. In the alternative, Joint IPP Interests propose a “compromise”² schedule for a Commission decision by December 15, 2023, to accommodate the IE, Staff, and Public Service that includes the following: 120-Day Report due September 11, 2023; IE Report due October 18, 2023; Intervenor’s comments due November 3, 2023; Company’s response Comments due

¹ Joint IPP Interests Response, p. 2.

² It is not included in the Joint IPP Interests’ filing whether other parties in addition to the Joint IPP Interests support or oppose the proposed alternative schedule.

November 22, 2023; and a Commission Phase II decision by December 15, 2023.³ Joint IPP Interests state that this modified schedule allows additional extra time for the IE, commenters, and the Company, but also recognizes that in a Phase II Electric Resource Plan (ERP) there is no discovery allowed by parties, no hearing to prepare for, and that Public Service has worked with the IE for the entire process.

8. Joint IPP Interests argue that the IPP projects will be prejudiced by an additional delay that could postpone final decisions in this matter through March of 2023 to consider requests for rehearing, reargument, and reconsideration. Thus, the Joint IPP Interests request that, “if the Third Extension is granted, that IPP projects with [in service dates] in 2026 be afforded extensions of 74 days, including into 2027 and 2028, respectively, commensurate with prior extensions previously granted....”⁴

9. By Decision No. C23-0594-I,⁵ the Commission granted the Joint Motion for Third Extension, in part. The Commission extended the deadline to file the 120-Day Report from September 11, 2023, to September 18, 2023. However, the Commission deferred ruling on the other requested Phase II schedule modifications and set response time to the Joint Motion for Third Extension through September 8, 2023.

10. On September 8, 2023, COSSA/SEIA filed a response to Decision No. C23-0594-I. In its response, COSSA/SEIA argues that it is critically important that the Commission issue a final Phase II decision before the end of 2023. COSSA/SEIA argues that additional delays may make it difficult for developers to maintain their bid prices. As such,

ose the proposed alternative schedule.

⁴ *Id.* at 11.

⁵ Issued September 7, 2023.

COSSA/SEIA continues to support the alternative Phase II schedule put forth in the Joint IPP Interests Response.

11. Likewise, on September 8, 2023, Onward Energy Management LLC (Onward Energy) also filed a response to Decision No. C23-0594-I. In its response, Onward Energy does not take a position on the specific dates for the Phase II schedule, other than urging the Commission to adopt a schedule that is as expeditious as possible.

C. Findings and Conclusions

12. We agree with the Joint IPP Interests and Onward Energy that the Commission should endeavor to render its Phase II decision in this Proceeding as soon as it reasonably can, preferably by the end of 2023. This urgency aligns with the ERP Rules that were established to ensure viable bids through an expedited Phase II process.⁶ At the same time, we recognize the significant complexity of this Phase II process relative to past ERPs as set forth in the Joint Motion for Third Extension. In light of this complexity, it is important that all parties, the IE, and the Commission can rigorously review the final portfolios.

13. Therefore, we will set October 20, 2023, as the deadline for the IE Report contemplated in Rule 3613(e) and November 8, 2023, as the deadline for intervenor comments contemplated in Rule 3613(f). These deadlines provide some additional time for the IE and intervenors, although not as much as the Joint Motion for Third Extension requests. Similarly, we set November 20, 2023, as the deadline for Public Service to file response comments contemplated in Rule 3613(g). This provides less time than the December 4, 2023, deadline that the Joint Motion for Third Extension proposes. Nevertheless, a November 20, 2023, deadline extends by three days

⁶ See Rule 3613 of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3.

the time Public Service has to file its response comments relative to the filing date of the 120-Day Report.⁷

14. In connection with extension of time to file the 120-Day Report granted in Decision No. C23-0594, we grant the request in the Joint Motion for Third Extension for a corresponding extension of any subsequent deadlines that flow from the 120-Day Report that are not set forth in the Commission's Rules. This includes the deadline for the Phase II emission verification report from CDPHE and the deadline for the Company to initiate the PIM stakeholder process.⁸

15. Finally, we deny the request of the Joint IPP Interests to extend the in-service dates of certain bids.⁹ While it is possible that the Commission will need to revisit this issue at a later date, it is premature to grant this requested relief at this point in the Proceeding.

II. ORDER

A. The Commission Orders That:

1. The Joint Motion for Partial Waiver of Rules 3613(d)-(h) to Provide Phase II Process Modifications and Request for Waiver of Response Time (Joint Motion for Third Extension) filed by Public Service Company of Colorado (Public Service) on September 5, 2023, is granted, in part, and denied, in part, consistent with the discussion above.

2. The Independent Evaluator shall file its report no later than October 20, 2023.

⁷ Rule 3613(g) (stating that the utility may file responsive comments 60 days after the filing of the 120-Day Report).

⁸ 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).

⁹ Joint IPP Interests Response, p. 11.

3. The intervenors in this Proceeding shall file their comments no later than November 8, 2023.

4. Public Service shall file its response comments no later than November 20, 2023.

5. The deadline for the Phase II emission verification report from the Colorado Department of Public Health and Environment and the deadline for the Company to initiate the Performance Incentive Mechanism stakeholder process are extended, consistent with the discussion above.

6. The request of the Colorado Solar and Storage Association and the Solar Energy Industries Association, the Colorado Independent Energy Association, and Interwest Energy in their Response to the Joint Motion for Third Extension to extend the in-service dates of certain bids is denied, consistent with the discussion above.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 13, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

Commissioners

COMMISSIONER TOM PLANT
ABSENT