

Decision No. R23-0401-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23F-0248G

SYMMETRY ENERGY SOLUTIONS, LLC

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
ESTABLISHING PROCEDURAL DEADLINES AND
EVIDENTIARY HEARING FORMAT**

Mailed Date: June 12, 2023

I. STATEMENT

A. Summary

1. This Decision establishes the format for the July 31, 2023, evidentiary hearing and sets a procedural schedule to govern this Proceeding.

B. Background

2. On May 17, 2023, Symmetry Energy Solutions LLC (Complainant or Symmetry) filed the above-captioned Complaint against Public Service Company of Colorado (Public Service

or Respondent). Symmetry asserts, among other claims, that Public Service is improperly seeking to collect “over \$2.5 million in Operational Flow Order (‘OFO’) penalties.”¹

3. On May 18, 2023, the Commission issued an Order to Satisfy or Answer advising Respondent of the Complaint filed against it. The Order set a hearing in this matter for July 31, 2023, at 9:00 a.m., and advised the parties of the same.

4. On May 24, 2023, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry for disposition. The Proceeding was subsequently assigned to the undersigned ALJ.

5. All parties are advised that this proceeding is governed by the Rules of Practice and Procedure found at 4 *Colorado Code of Regulations* (CCR) 723-1. The ALJ expects the parties to comply with these rules. The rules are available on the Commission’s website (<https://puc.colorado.gov/pucrules>) and in hard copy from the Commission.

6. Each party is specifically reminded that all filings with the Commission must also be served upon all other parties in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

II. PROCEDURAL GUIDELINES

A. Hearing Format.

7. A hybrid evidentiary hearing will be scheduled in this proceeding. The Parties may request a different hearing format, if desired.

¹ Formal Complaint of Symmetry Energy Solutions, LLC, filed May 17, 2023, ¶ 1.

8. The ALJ notes that the Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

9. If the Parties prefer a fully remote hearing or a fully in-person hearing, a motion to amend the hearing location and format may be filed.

10. The procedures developed for the remote evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room. For example, participating by videoconference allows parties and witnesses to view exhibits on the video-conference screen while the exhibits are being offered into evidence and witnesses testify about them.

11. Parties, witnesses, and counsel attending the scheduled hybrid evidentiary hearing in this Proceeding may appear in person or remotely. Attachment A to this Decision provides information about the Zoom platform and how to use Zoom to participate in the hearing remotely. To minimize the potential that the remote 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 by email approximately one week before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

12. At the hearing, the parties may call witnesses, present evidence, and make arguments in support of their position. Evidence includes documentary exhibits, testimony, and

other tangible items that a party wishes the ALJ to consider in reaching a decision as to the allegations in this case. Given that the hearing will accommodate remote participation by video-conference, exhibits must be presented electronically.

B. Introduction of Evidence

13. The Public Utilities Commission Administrative Hearings Section uses box.com to receive and manage exhibits that are first presented at remote hearings.² As such, it is essential that the parties ensure they can access and use box.com before the hearing. The ALJ is entering orders to facilitate using box.com to manage exhibits during the hearing. To this end, the parties will be provided box.com links and instructions to: (a) upload documents and exhibits for use during the hearing; and (b) download documents and exhibits once they are presented during the hearing.

14. Each party must: (a) pre-mark all hearing exhibits with a hearing exhibit number within their assigned number block before uploading the exhibits to the party's designated box.com folder; (b) sequentially page-number each page of exhibits longer than two pages, with the first page numbered as page 1, regardless of content before uploading the exhibits to the party's designated box.com folder; and (c) upload all pre-marked exhibits into each party's respective designated box.com folder prior to presenting them during the hearing.

15. Attachment B outlines procedures and requirements for marking and formatting exhibits aimed at facilitating efficient and smooth electronic evidence presentations at the remote hearing. It is very important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

² Box.com is a web-based document sharing service. When exhibits are first presented during the hearing, the Commission will receive them electronically from each party's box.com folder for display.

16. Additional procedural requirements may be issued in future Interim Decisions.

C. Informal Video-Conference Practice Session.

17. The ALJ will hold an informal practice video-conference session if requested by at least one party to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

18. The parties may contact a Commission Legal Assistant by email at stephanie.kunkel@state.co.us or casey.federico@state.co.us to schedule an informal practice video-conference session.

19. The parties will receive information and a link to participate in the informal practice session by email.

D. Advisements

20. *All parties are on notice* that failure to appear at the evidentiary hearing may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application. The ALJ will deem any party's failure to appear at the hearing to be a waiver of that party's objection to the rulings made during the prehearing conference.

21. *The parties are on notice* that filing an exhibit with the Commission does not, by itself, admit an exhibit into the record of the proceeding. An exhibit is any document or other tangible item the party wishes the ALJ to consider in reaching a decision in this matter.

22. *The parties are also on notice* that if circumstances change before the hearing date, the ALJ may modify this hearing to be held in person or hybrid (in person with the option for

witnesses, parties, and/or representatives to appear virtually), or may enter such other orders as appropriate in the circumstances.

23. All parties must be familiar with and follow the Commission’s Rules of Practice and Procedure, 4 CCR 723-1, and the Commission’s Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. The parties may obtain a copy of these rules from the Commission in hard copy or on the Commission’s website at: <https://www.colorado.gov/pacific/dora/pucrules>

24. The parties are reminded that no witness will be permitted to testify, except in rebuttal, unless that witness has been identified on a list of witnesses filed in accordance with the procedural schedule set forth below. Likewise, no exhibit will be received in evidence, except in rebuttal, unless filed in accordance with the procedural schedule as ordered below.

25. The ALJ is entering additional orders necessary to ensure the evidentiary hearing moves forward efficiently.

III. ORDER

A. It Is Ordered That:

1. The evidentiary hearing scheduled for July 31, 2023, at 9:00 a.m. shall be held in a **hybrid** format permitting participants to appear in person or through the Zoom videoconferencing platform.³

DATE: July 31, 2023
TIME: 9:00 a.m.
LOCATION: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

³ Instructions for using the Zoom videoconferencing platform are provided in Attachment A to this Decision.

METHOD: In-person and by videoconference using Zoom at the link to be provided to counsel and the parties via email prior to the hearing.

Optionally, any party may participate remotely by joining a video conference using Zoom at the link provided to the established parties in an e-mail prior to the scheduled hearing, as addressed above.⁴

2. **Video-Conference Participation.** Counsel for the parties, parties, and witnesses shall attend in person or participate in the evidentiary hearing by videoconference using the Zoom platform.

3. Participants in the hearing may not distribute the Zoom link and access code to anyone not participating in the remote hearing.

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

5. **Deadlines for Witness Lists, Exhibit Lists, and Exhibits:** Symmetry Energy Solutions, LLC (Complainant), must file with the Commission and serve on all parties, its pre-marked exhibits, witness lists, and exhibit lists **by the close of business on June 20, 2023**. Public Service Company of Colorado (Respondent), must file with the Commission and serve on all parties, its pre-marked exhibits, witness lists, and exhibit lists **by the close of business on July 5, 2023**. Complainant may supplement its witness and exhibit lists in response to Respondent's witness and exhibit list but must do so by filing and serving amended witness and exhibit lists, and any additional exhibits not already filed **by the close of business on July 17, 2023**. Any amended witness and exhibit lists filed by Complainant on or before July 17, 2023, should list all the witnesses and exhibits that Complainant intends to present at the hearing, including those listed in

⁴ Instructions for using the Zoom videoconferencing platform are provided in Attachment A to this Decision.

its previous witness and exhibit lists, and will supersede its prior witness and exhibit lists.⁵ As noted, the parties must mark their exhibits for identification *before* filing and serving them; additional information on marking exhibits for identification is set forth below.

6. **Requirements for Witness Lists.** Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information.

7. **Requirements for Exhibit Lists.** Exhibit lists must include the hearing exhibit number assigned to each exhibit and a brief description of the exhibit. Any party may offer any exhibit sponsored by another party and is not required to include such an exhibit on their own exhibit list.

8. **Evidence Presentation at the Evidentiary Hearing.** Because the participation in the evidentiary hearing will be via videoconference, all evidence must be presented electronically. Each party is responsible for ensuring that they and their respective witnesses: (a) have access to all pre-filed exhibits; and (b) can download and view documents available from box.com during the hearing.

9. **Instructions for Preparation and Presentation of Exhibits at Hearing:** In addition to other requirements of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (e.g., Rule 1202 regarding pre-filed testimony), detailed additional instructions governing the preparation and presentation of exhibits at the hearing are set out in Attachment B to this order, which is incorporated into and made part of this order.

- **Complainant Symmetry Energy Solutions, LLC, is assigned exhibit numbers 100-199** and should number its exhibits accordingly.

⁵ This is intended to avoid Complainant filing supplemental witness and exhibit lists, which would require the ALJ and the parties to review the original and the supplemented lists in order to determine the full lists.

- Respondent Public Service Company of Colorado is assigned exhibit numbers 200-299 and should number its exhibits accordingly.

10. **Deadline to File Statements of Position:** After the evidentiary hearing, the parties may file their respective Statements of Position, in lieu of verbal closing arguments; any party wishing to do so must file with the Commission and serve on the opposing party their statement of position **by the close of business on August 14, 2023.**

11. The Administrative Law Judge will hold an informal Zoom practice session upon request.

12. The parties shall comply with the requirements established in this Interim Decision and shall make the filings as required by the adopted procedural schedule.

13. This Decision shall be effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

Rebecca E. White,
Director