

Decision No. R23-0411-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
GRANTING UNOPPOSED MOTION TO EXTEND
RESPONSE DEADLINE AND
VACATING EVIDENTIARY HEARING**

Mailed Date: June 16, 2023

I. STATEMENT

A. Summary

1. This Decision grants Symmetry Energy Solutions, LLC's, Unopposed Motion to Extend Response Deadline and Vacate Trial Date, and vacates the evidentiary hearing set by the Public Utilities Commission (PUC or Commission) in its May 18, 2023, Order Setting Hearing and Notice of Hearing.

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 and Public Service’s opportunity to either satisfy the allegations in the Complaint or answer it. Contemporaneously with the Order to Satisfy or Answer, the Commission also issued its Order Setting Hearing and Notice of Hearing which 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. By Decision No. R23-0401-I, issued June 12, 2023, the undersigned ALJ established the format for the evidentiary hearing and set deadlines for procedural matters in the Proceeding.

6. On June 7, 2023, Public Service filed a Motion to Dismiss the Formal Complaint with Prejudice. In its Motion, Public Service contends that Symmetry’s Complaint should be dismissed because (1) Symmetry cannot assert a due process violation against Public Service; (2) the Commission lacks jurisdiction to address Symmetry’s contract claim; and (3) Symmetry’s remaining claims are “impermissible collateral attacks” on the Commission’s final decision in

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

Proceeding No. 21A-0192EG (the Storm Uri Proceeding), Decision No. C22-0512, issued September 1, 2022.

7. Symmetry has now filed an Unopposed Motion to Extend Response Deadline and Vacate Trial Date. As discussed below, the ALJ will grant both requests.

II. UNOPPOSED MOTION TO EXTEND RESPONSE DEADLINE

8. On June 14, 2023, Symmetry filed an unopposed motion requesting additional time to respond to Public Service’s Motion to Dismiss. In its Unopposed Motion to Extend Response Deadline, Symmetry represents that due to conflicting work commitments and a planned vacation, its counsel will not be able to file a response to Public Service’s Motion to Dismiss within the time permitted by the applicable Rule.

9. Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, a responding party “shall have 14 days after service of the motion . . . in which to file a response.” Thus, under Rule 1400(b), Symmetry’s response to Public Service’s Motion to Dismiss is currently due on or before June 21, 2023.

10. Because of the conflicts described above, Symmetry requests that it be granted up to and including July 10, 2023, to respond to Public Service’s Motion to Dismiss. Symmetry represents that Public Service does not oppose this request.

11. An unopposed motion may be granted before expiration of the time within which to respond to the motion. *See* Rule 1400(a)(II), 4 CCR 723-1. As Symmetry’s motion is unopposed, the ALJ finds that waiving the response time to the Motion to Extend Response Deadline will not prejudice either party. The ALJ will therefore waive response time to the Motion to Extend Response Deadline.

12. The ALJ further finds that Symmetry has established good cause for the extension of its deadline to respond to Public Service’s Motion to Dismiss. The ALJ will therefore grant the motion to extend. The ALJ will order that Symmetry’s response to Public Service’s Motion to Dismiss will be due on or before July 10, 2023.

III. UNOPPOSED MOTION TO VACATE TRIAL DATE

13. In its Unopposed Motion, Symmetry also requests that the undersigned ALJ vacate the evidentiary hearing currently scheduled for July 31, 2023. Symmetry further requests that the procedural deadlines established by Decision No. R23-0401-I be likewise vacated and reset. Symmetry requests that, instead, the evidentiary hearing in this Proceeding be “reset after a decision” addressing Public Service’s Motion to Dismiss is issued.

14. Symmetry represents that delaying the scheduling of the evidentiary hearing until after a decision is issued on the Motion to Dismiss will enable this matter “to proceed in an orderly fashion.”

15. Symmetry further represents that it has conferred with Public Service and that it and Public Service collectively request the vacation of the hearing date and procedural deadlines.

16. An unopposed motion may be granted before expiration of the time within which to respond to the motion. *See* Rule 1400(a)(II), 4 CCR 723-1. As the motion to vacate the hearing date is unopposed, the ALJ finds that waiving the response time to the Motion to Vacate Trial Date will not prejudice either party. The ALJ will therefore waive response time to the Unopposed Motion to Vacate Trial Date.

17. The ALJ finds that the parties have established good cause for vacating the evidentiary hearing currently set for July 31, 2023, as well as the procedural deadlines established by Decision No. R23-0401-I.

18. Further, because Symmetry has not submitted prefiled testimony and exhibits, the statutory period established by § 40-6-108(4), C.R.S., is inapplicable here. Consequently, vacating and later resetting the hearing date will not unduly burden the Commission's ability to issue a timely decision.

19. The July 31, 2023, evidentiary hearing will be vacated, and the procedural deadlines established by Decision No. R23-0401-I will likewise be vacated.

IV. **ORDER**

A. **It Is Ordered That:**

1. Response time to the Unopposed Motion to Extend Response Deadline and Vacate Trial Date filed by Complainant Symmetry Energy Solutions, LLC, on June 14, 2023, is waived.

2. Symmetry Energy Solutions, LLC, shall have up to and including **July 10, 2023**, to respond to the Motion to Dismiss Symmetry Energy Solutions, LLC's Formal Complaint with Prejudice filed by Public Service Company of Colorado on June 7, 2023.

3. The evidentiary hearing scheduled for **July 31, 2023**, at 9:00 a.m. is vacated.

4. The procedural deadlines established by Decision No. R23-0401-I, issued June 12, 2023, are also vacated.

5. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director