

Decision No. C24-0392

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.

**COMMISSION DECISION GRANTING STAFF'S
APPLICATION FOR REHEARING, REARGUMENT, OR
RECONSIDERATION OF DECISION NO. C24-0337**

Mailed Date: June 6, 2024

Adopted Date: June 5, 2024

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission grants the Application for Rehearing, Reargument or Reconsideration of Decision No. C24-0337 (RRR) that Trial Staff of the Colorado Public Utilities Commission (Staff) filed on May 28, 2024. As set forth more below, Staff's RRR relates to the stakeholder performance incentive mechanism (PIM) that Public Service Company of Colorado (Public Service of the Company) proposed in the testimony of Michael Pascucci (Stakeholder PIM) on April 30, 2024, and the Commission's subsequent decision requiring intervenors to file responsive testimony by June 7, 2024.

2. We extend and permit responsive filings through June 24, 2024. Interested parties choosing to file responsive pleadings are encouraged, but not required, to provide written responsive testimony. Parties may exercise their discretion and provide comments in response to the Company's PIM filings presented in the written testimony of Michael Pascucci.

B. Background and Staff's RRR

3. The Updated Non-Unanimous Partial Settlement Agreement (Phase I Settlement Agreement) that was filed on April 26, 2022, and the Decision No. C22-0459,¹ (Phase I Decision), contemplate the development of both a stakeholder PIM addressing Pueblo Unit 3's O&M expenses, capital costs, and availability factor, and an emissions reduction stakeholder PIM.² After Public Service filed the stakeholder PIMs, the Phase I Settlement Agreement and Phase I Decision further includes that parties would have a 30-day comment period followed by, if necessary, a limited and expedited evidentiary hearing.³

4. Public Service filed its Stakeholder PIM on April 30, 2024, via the testimony of Michael Pascucci. The Stakeholder PIM addresses Unit 3's capital costs, O&M expenses, and availability factor. However, Public Service represents that the Company and stakeholders are not yet ready to bring forward an emissions PIM for approval.

5. In Decision No. C24-0337,⁴ we directed Public Service to make a supplemental filing that includes, in one document, the actual and projected capital expenses by project for 2023 through 2030 for Unit 3. The Commission detailed the requirements for the supplemental filing and ordered Public Service to submit it by May 29, 2024.⁵

6. Given this supplemental filing, we extended the deadline for intervenors to provide feedback on the Company's Stakeholder PIM proposal to June 7, 2024. The Commission also required interested intervenors to file any such responses in the form of written testimony to "help

¹ Issued August 3, 2022.

² Phase I Settlement, ¶ 50; Phase I Decision, ¶¶ 391-92.

³ Updated Settlement Agreement, ¶ 51; Phase I Decision, ¶ 389.

⁴ Issued on May 17, 2024.

⁵ Decision No. C24-0337, ¶¶ 14-15. On May 29, 2024, Public Service filed its response via supplemental written testimony.

ensure clarity of record, particularly given that the Company has provided written testimony in support of its Stakeholder PIM proposal.”⁶

7. On May 28, 2024, Staff filed its RRR. In its RRR, Staff first asks that the Commission permit intervenor to file comments in response to Public Service’s Stakeholder PIM instead of testimony. Staff notes that the Phase I Settlement Agreement and the Phase I Decision contemplate comments instead of testimony and implies that the Commission should adhere to the original process agreed upon in the Phase I Settlement. Staff also argues that by requesting testimony the Commission “risks inadvertently signaling it has re-opened the record after over 2.5 years.”⁷ Staff further asserts that requiring testimony “prevents parties from working together to provide the Commission with joint comments.”⁸

8. In the RRR, Staff also requests that the Commission extend the deadline for intervenors to respond to the Company’s Stakeholder PIM from June 7, 2024, to June 24, 2024. Staff argues that this extension will allow intervenors to discuss the supplemental filing the Company will make on May 29, 2024, and consider joint comments. Staff further argues that the extension is warranted due to a heavy and complex caseload before the Commission and previously scheduled annual leave.⁹

9. Finally, Staff states that Colorado Energy Office, Utility Consumer Advocate, and Western Resource Advocates support Staff’s RRR requests.¹⁰

⁶ Decision No. C24-0337, ¶ 16. The Commission also invited the parties to address (1) an alternative approach in which prudently incurred capital expenditures associated with Unit 3 over and above the Phase II modeling forecasts would be treated as an expense item, (2) the emission reduction PIM, including the Company’s statements regarding its inability to develop such a PIM. (Decision No. C24-0337, ¶¶ 17, 19).

⁷ Staff’s RRR, p. 3.

⁸ Staff’s RRR, p. 3.

⁹ Staff’s RRR, pp. 3-4.

¹⁰ Staff’s RRR, p. 4.

10. On May 29, 2024, Public Service submitted its supplemental filing in the form of written testimony from Michael Pascucci.

C. Findings and Conclusions

11. The Commission grants Staff's RRR. As to Staff's request to permit comments, we do not forbid Staff or any other party or member of the public from submitting comments. The Commission reads all comments that we receive. However, we note that sworn testimony from interested parties may be more efficient, particularly if the Commission moves towards an evidentiary hearing as contemplated, given that pre-filed testimony provides a clear path forward for potential cross-examination and Commissioner questioning. Having written testimony from intervenors, therefore, might be especially helpful if the Commission finds that a limited, expedited hearing is necessary, particularly where the Company's initial filings are provided in the form of pre-filed written testimony. We also note that filing supporting, written testimony in no way prohibits parties from conferring and presenting appropriate filings or aligned positions in responsive pleadings.

12. Thus, while it is the prerogative of the parties to decide how best to support their respective positions and advocate as they see fit, we grant Staff's RRR to permit comments from interested parties. No party is prohibited from submitting comments in response to the Company's proposed Stakeholder PIM and supplemental filings. Comments and testimony will be afforded their appropriate weight as the Commission moves forward in this expedited and focused process.

13. Regarding the requested deadline extension, we grant Staff's request to extend the deadline for responsive filings from June 7, 2024, to June 24, 2024, for the reasons stated in Staff's RRR. The additional time will hopefully facilitate more robust responses to the Company's Stakeholder PIM, including its supplemental filing on May 29, 2024.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument or Reconsideration of Decision No. C24-0337 that Trial Staff of the Colorado Public Utilities Commission filed on May 28, 2024, is granted, consistent with the discussion above.

2. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 5, 2024.**

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners

Rebecca E. White,
Director