Decision No. C24-0593

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22A-0315EG

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS COMBINED ELECTRIC AND NATURAL GAS DEMAND-SIDE MANAGEMENT AND BENEFICIAL ELECTRIFICATION PLAN FOR CALENDAR YEAR 2023.

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**COMMISSION DECISION SHORTENING RESPONSE TIME TO MOTION OF PUBLIC SERVICE COMPANY TO ADDRESS ELECTRIC ENERGY EFFICIENCY BUDGETARY PRESSURES FOR CALENDAR YEAR 2024, AND REQUEST FOR WAIVER OR VARIANCE AS NECESSARY AND REQUIRING THE FILING OF ADDITIONAL INFORMATION**

Issued Date: August 15, 2024
Adopted Date: August 14, 2024

# I. BY THE COMMISSION

## A. Statement

1. Through this Decision, the Commission shortens response time to the Motion to Address Electric Energy Efficiency Budgetary Pressures For Calendar Year 2024, and Request for Waiver or Variance as Necessary ("Budget Motion") filed by Public Service Company of Colorado ("Public Service or the "Company") on August 12, 2024 to Monday, August, 19, 2024.

2. Also through this Decision, the Commission orders Public Service to file responses to certain questions as a supplement to its Budget Motion. Public Service shall file these responses no later than August 19, 2024.

## B. Background

3. Through Decision No. C23-0381, the Commission addressed the Application for Approval of its 2023 Electric and Natural Gas Demand-Side Management ("DSM") and Beneficial Electrification ("BE") Plan ("2023 DSM & BE Plan" or the "Plan"), filed by Public Service on July 1, 2022. The Decision provides full procedural background from the initial Application filing through the issuance of the Decision on June 8, 2023.

4. By Decision No. R24-0086-I, in Proceeding No. 23A-0589EG, the Commission granted Public Service an extension of the 2023 DSM & BE Plan until the conclusion of Proceeding No. 23A-0589EG, its 2024-2026 DSM & BE Plan.

5. On July 31, 2024, the Company filed a "Notice of Success" in this Proceeding. Within its Notice, it states that for the calendar year through June 30, 2024, the Company has spent approximately $70 million on electric energy efficiency ("EE"), with estimated savings of 401 GWh. With the Company's current forecasted electric EE trajectory, it could spend approximately $115.6 million, with estimated savings of 593.5 GWh. However, because this would exceed the Commission's authorized budget amount by approximately $22 million, the Company has taken steps to cease expenditures.

6. Per the Notice of Success, those steps include pausing further spending on EE programs for the remainder of 2024. On July 31, 2024, the Company send an email to DSM contractors telling them to submit invoices by the end of the day on August 15, 2024, for all work completed through August 2, 2024, and that no work should be started during this pause.

7. On August 5, 2024, Energy Efficiency Business Coalition ("EEBC") and the Southwest Energy Efficiency Project ("SWEEP") filed a joint "Response and Petition for Declaratory Order and Motion for Preliminary Injunction" ("Preliminary Injunction Motion.")

They indicate that the no party to Proceeding No. 22A-0315EG takes a position on the Motion, including Public Service which did not review the draft filing. As of August 15, 2024, no responses have been received to the Preliminary Injunction Motion.

8. In their Preliminary Injunction Motion, EEBC/SWEEP state that they received a notice on July 31, 2024, that went to DSM contractors (included as Attachment A to the Motion) that told DSM providers to stop working on all projects that would require an invoice to be sent to the Company. EEBC/SWEEP argues that this unilateral move is bad for customers, the DSM industry in Colorado, and worse for the continued success of the DSM programs that need increased contractor and customer engagement to be successful. EEBC/SWEEP argues that there is no "imminent crisis" because the DSM budget is not a "hard cap" but only the budget to which a presumption of prudence applies.

9. EEBC/SWEEP argues that the Commission has "the authority to enforce its orders and do all things necessary to effectuate the public interest," including order that the Company implement changes to its DSM and BE offerings through the 60/90 Day Notice process, a DSM Plan amendment, or other relief that may be applicable by Motion or Application to the Commission.

10. EEBC/SWEEP request the Commission grant its Petition for Declaratory Order pursuant to Rule 1304(i)(1), 4 *Code of Colorado Regulation* ("CCR") 723-1 of the Commission's Practice and Procedure Rules. In order to accept a Petition for Declaratory Order, the Commission must consider whether there is a legal controversy to terminate. EEBC/SWEEP argue that a legal controversy exists—namely whether the Company needs to use the 60/90-day Notice process to stop awarding rebates and incentives as the Company has done. The Petition argues that the Commission has ordered the use of the 60/90-day process since at least 2009 and continues to

approve its continuation at least through the 2024-2026 DSM Plan Proceeding. They argue that stopping awarding rebates and incentives constitutes an unprecedented and significant mid-year modification of the 2023 DSM Plan, which represents reduced (or eliminated) rebate levels, and reduced eligibility for customers, "[t]hus, a proposal to modify the DSM Plan by stopping all non-IQ products and services is a modification that requires the appropriate 60 or 90-day Notice process."[1]

11. In addition, EEBC/SWEEP request the Commission issue a preliminary injunction in accordance with Colorado Rule of Civil Procedure 65. EEBC/SWEEP state that they have shown a "reasonable probability of success on the merits" of its Petition for Declaratory Order because Public Service has not shown anything that contradicts the need for the use of the 60/90-day process here. EEBC state that there is a risk of immediate, and irreparable injury without an injunction because of the investments EEBC member-businesses have made and the work orders in place based upon rebates from the Company. They also argue that the public interest and the balance of the equities favor the injunction and that there is no risk to Public Service other than having to possibly request a prudence determination if it is to overspend the authorized DSM budget. On the other hand, EEBC/SWEEP assert that the Company risks the trust and participation of the DSM business community, and the backlash of hundreds of customers that may find no program awaits them even after they have made the decision to invest in DSM products or equipment. Finally, they argue that the injunction would preserve the status quo while the Commission weighs the merits of the Success Notice and this Petition for Declaratory Order EEBC/SWEEP also note the other options the Company has, all of which are less drastic than the route it has taken, including removing bonus rebates in place for certain products, cutting back on

[1] EEBC/SWEEP Petition, p. 13.

marketing, or moving budget dollars from products that are under-spent to products with more interest.

12. On August 12, 2024, the Company filed its Budget Motion. In its Motion, Public Service puts forth three proposals to address this issue. The Company's preferred option is to increase the approved budget for the Company's electric EE offerings to add an additional $34.1 million to the 2023 electric EE Plan budget of $92.9 million as applied to calendar year 2024. The Company states that it reasonably expects that this preferred option would allow the Company to continue providing all of its cost-effective electric EE offerings to customers through the remainder of 2024. The two alternative options the Company presents for Commission consideration involve either approving a smaller increase in budget for 2024 or directing the Company to endeavor to manage the electric EE program without a budget increase through Company flexibility to pay out current or future rebate applications no earlier than January 1, 2025. To the extent necessary, the Company requests waivers and variances such that it may implement one of the three proposed alternatives. The company argues that there would also be good cause of the granting of a partial waiver or variance as the public interest is furthered by the options set forth in this Motion to address the unprecedented budgetary concerns, and also provide clarity to all parties and the market at large that the Company can move forward to implement the Commission's resolution of this Motion.

**C. Findings and Conclusions**

13. We find that it is premature to address the merits of any of the pending filings until parties have had an opportunity to respond. However, in light of the urgency claimed in EEBC/SWEEP's Motion and the Company's acknowledgement that stability is important for the

DSM market,[2] we find it necessary to move quickly on addressing the merits of the pending filings. To that end, we find good cause to shorten response time pursuant to Commission Rule 1400(b), 4 CCR 723-1, to August 19, 2024. Receiving any responses to both EEBC/SWEEP's filing and the Company's filing by that deadline will allow the Commission to move expeditiously towards a resolution on the merits.

14. We also find good cause to require the Company to respond to certain questions and requests for additional information that will enable to Commission to resolve the request in the Company's Budget Motion more expeditiously. We require the Company to respond, no later than August 19, 2024, to the following questions:

- How many applications have been currently received by the Company for 2024 electric EE business rebates? What dollar value and savings levels do those applications represent? And of those, please indicate current application and implementation status, to the extent known. How does the pause described in the Notice of Success affect already contracted work?
- Please categorize and characterize the expected overrun in electric EE business rebates. What type of measures are being requested (*e.g.*, lighting, HVAC, refrigeration, etc.)? Is the participation overage potentially due to the availability of federal, state or local incentives, or other external factors?
- Did the Company consider refining measure incentive levels, via discussions with stakeholders, in order to mitigate the need for additional funds above the budget plus flexibility levels approved by the Commission in 22A-0309EG? Please explain what mitigation measures were evaluated before the approach in the Notice of Success was implemented. What notice was provided regarding this problem earlier than July 31, 2024, and if no prior notice was provided, why was that not possible?
- What protocols or processes does the Company suggest to mitigate the chance of budget overrun in 2025?
- In the Notice Of Success filing, the Company indicated forecasted total expenditures of $115.6M and 593.5 GWh of savings if staying on the same trajectory for 2024. In the Budget Motion, the Company indicated forecasted spending of $127M and 688 MWh in savings for 2024. Please explain the

[2] Public Service Budget Motion, p. 7 ("The Company is seeking a resolution that will provide stability rather than continuing uncertainty for its customers and other market participants for the remainder of the year").

difference in these forecasts and provide filings substantiations for the projections in the Budget Motion.

- Is it possible to mitigate overrun in electric EE business expenditures moving forward through the reduction in measure incentive levels for applications that have not yet been approved?

## II. ORDER

### A. The Commission Orders That:

1. Response time to the Motion to Address Electric Energy Efficiency Budgetary Pressures For Calendar Year 2024, and Request for Waiver or Variance as Necessary filed by Public Service Company of Colorado on August 12, 2024 is shortened to Monday, August, 19, 2024.

2. This Decision is effective immediately on its Issued Date.

### B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING August 14, 2024.

(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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Commissioners