Decision No. C24-0610

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0315EG

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.

COMMISSION DECISION REQUIRING THE FILING OF ADDITIONAL INFORMATION AND SETTING RESPONSE AND REPLY DEADLINES

Issued Date: August 21, 2024
Adopted Date: August 21, 2024

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission orders Public Service Company of Colorado ("Public Service or the "Company") to file responses to certain questions as a second supplement ("Second Supplement") to its Motion to Address Electric Energy Efficiency Budgetary Pressures For Calendar Year 2024, and Request for Waiver or Variance as Necessary ("Budget Motion") filed by on August 12, 2024. Public Service shall file these responses no later than August 28, 2024.

2. Parties may also respond to the Company's August 19, 2024 Verified Supplement Responses filed pursuant to Decision No. C24-0593 by August 28, 2024. In addition, the Commission requests responses to the Company's August 28, 2024 Second Supplement no later than August 30, 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 sent 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.")

8. 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] In addition, EEBC/SWEEP request the Commission issue a preliminary injunction in accordance with Colorado Rule of Civil Procedure 65.

9. 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

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

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.

10. Through Decision No. C24-0593, issued on August 15, 2024, the Commission shortened the response time to the Budget Motion and ordered Public Service to file Supplemental Responses to its Budget Motion no later than August 19, 2024. On August 19, 2024, the Company filed "Verified Supplement" to the Budget Motion which included responses to the questions posed by the Commission through Decision No. C24-0593 ("First Supplement").

11. On August 19, 2024, the Commission received responses from Colorado Energy Consumers' ("CEC"); the Colorado Office of the Utility Consumer Advocate ("UCA"); Climax Molybdenum Company ("Climax"); SWEEP, EEBC, and Western Resource Advocates ("WRA"), collectively; Public Service; the Colorado Energy Office ("CEO"); and Trial Staff of the Colorado Public Utilities Commission ("Trial Staff"). On August 20, 2024, the City and County of Denver ("Denver") also filed a response.

12. The Company's First Supplement includes additional record support[2] to assist the Commission in adjudicating the Budget Motion, including additional information on the scope of work completed, in review, and in the pipeline, as well as which program categories drove this budgetary issue, and what outreach and program modifications occurred to address this concern already.

[2] The First Supplement included an attestation from Mr. Brian G. Doyle, Director, Product Strategy and Development that the information is true and accurate.

C. Findings and Conclusions

13. While we appreciate the additional insight received through the Company's First Supplement, we continue to have questions regarding how this budgetary issue occurred and what is the best path forward. We cannot determine which, if any, of the proposed solutions in the Company's Budget Motion is appropriate without additional input. We are receptive to the criticisms received in party responses and the need for caution in adjudicating budgetary matters outside the Commission's typical process and procedures. We do not take lightly the concerns raised regarding sanctity of the adjudicatory process and the need for party input and record support to modify or amend Commission Decision No. C23-0381 pursuant to § 40-6-112, C.R.S. or other means. That said, we are also concerned with the lapse in rebates and potential ongoing harm to the DSM market. To that end, we 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 28, 2024, to the following questions:

- Table A, p. 6 of the Company's Budget Motion claims that as of July 31, 2024 it has spent $74 million. Has this $74 million in funds been sent out or is this just the accrued liability?
- Table A of the Company's Budget Motion indicates that $54.4M has been paid to business programs as of July 31. Table 2 of the Company's First Supplement submitted August 19, 2024 indicates that $42M has been paid to business programs. Please explain the apparent discrepancy.
- Referring to the First Supplement, please explain further the applications categorized as "In Review" and "Pipeline." How many of the applications in each category are eligible to receive the bonus rebate? To what extent and form did the Company commit to payment, and amount of, rebates in each application category (*i.e.,* In Review, Pipeline)? Can the rebate amount be adjusted for applications in either application category?
- Is the Company still processing and paying rebates to "In Review" applications, or is it awaiting a Commission decision under the Company's motion?

- Is the Company contractually obligated to make these "In review" payments? Can the Commission decrease the rebate payment for "In Review" bonus rebates for applications filed after April 16, 2024?
- Please provide a thorough explanation of the application process. For example, does the customer or EE vendor get an initial approval from the Company before work has begun? Are contracts executed and if so, when? If the Company does not execute contracts, how are customer expectations set? Please respond with the process specific to each program type, where appropriate.
- Please provide additional information on any EE programming that may incur multiple month Company commitment of funding for specific projects. For those projects already underway that have multiple month funding commitments:
  - What is the Company's obligation to continue with payments for progress made to date and for progress going forward to complete those projects?
  - What are the Company's current plans during the "pause" and under each of the options provided in the Company's motion to continue payments for ongoing projects that began prior to the program "pause"?
  - In which category of spending outlined in the First Supplement (In Review, Pipeline, or other) do those future expenditures for projects already underway appear?
- Please elaborate further on what information and commitments the Company has related to projects in the "Pipeline," including:
  - Does the Company have any explicit guarantees to fund Pipeline projects at the anticipated levels?
  - If these are projects that have not yet submitted applications, provide a detailed description of how the Company is aware of the expected volume of applications, expenditure and savings associated with these projects.
  - Since we are in the third quarter of 2024, what percentage of the pipeline expenditures and savings does the Company expect to hit in 2024 versus 2025 and how is the Company aware of the expected timing?
  - If incentive levels are adjusted for specific programs, does the Company anticipate that "Pipeline" projects would necessarily be at existing incentive levels or could they be modified to new levels?
- Could a single C&I facility submit numerous applications to a specific business EE program (*e.g.,* Business Energy Assessments) in a given year? If so, how does the Company distinguish between energy savings of a given project or application?
- Please provide information on any caps on rebates per program, per year or lifetime that exist within the offerings to limit expenditures to a single facility or owner.
- How does the Company distinguish between energy savings that are due to Business Energy Assessments and energy savings that are specific to the measures installed (*e.g.*, via the lighting efficiency program) that may have been recommended first under the

Business Energy Assessment program? What assurance can the Company provide that reported energy savings are not double counted across programs?

- Most of the "Pipeline" application expenditures listed in the First Supplement to be invested comes from a single category: New Construction (*See* Table 1, First Supplement). Please explain what expenditures are expected under that program. Provide additional insight into why the estimated New Construction Pipeline investment is much larger than the "Completed" and "In Review" applications for 2024 this late into 2024. Also, please indicate if the "Pipeline" work projected for this category has any relationship to work that is ongoing or already contracted with trade allies or end customers.
- With respect to Tables 1 and 2 in the Company's First Supplement:
  - Why does the $3.8M of "Pipeline" Lighting Efficiency projects appear to have a dramatically reduced energy savings per dollar spent than projects both "Completed" and "In Review"?
  - Why does the $10.4M in "Pipeline" New Construction spending represent a materially improved energy savings per dollar spend than the projects both "Completed" and "In Review"?
  - The Company reports that it expects a dramatic uptick in applications for data center efficiency in the remaining months of the year, based on values provided related to the "Pipeline." However, the Company expects to spend only $10,000 for a roughly 20-fold increase in applications. Please elaborate on this projection and, more broadly, the impact that the emergence of more data centers could have on DSM offerings and spending targeted at that sector.
- Have company estimates of "In Review" and "Pipeline" expenditures taken into account the pause put on all business programs in place since July 31, 2024? Which categories of applications are most likely to be impacted by the pause and any idea on projected impact?
- Please explain how 2024-2026 spending levels approved in Proceeding No. 23A-0309EG could be brought forward some to quickly get these business programs back up and running while maintaining multi-year spending caps set in prior orders unless altered in a future proceeding. The Company indicates that the overage forecast was primarily driven by indoor agriculture. *See* First Supplement, p. 2. However, those increases appear to happen across several program categories, making tracking of the impact difficult to comprehend. To the extent possible, please reproduce Table 1 and 2 of the Supplemental Information specifically for the indoor agriculture industry.
- Does the Company track DSM program spending, number of applications, and energy savings by general industry? If so, please summarize to the extent reasonably possible or point us to where this information may already be filed with the Commission.
- The Company indicates that the number of applications and program cost related to the indoor agriculture industry have exceeded expectations. Does the Company have any insights into the perceived demand for rebates for that sector after removal of the bonus incentive?

- Does the Company have any indication if additional adjustments should be made to rebates or incentives aside from those already taken by the Company, including the discontinuation of indoor agriculture lighting from the SEM program and discontinuation of the in-market rebate bonus for indoor agricultural lighting, in order to manage to budgets in future years?
- Did the Company have any other promotional bonus incentives that were in place at the time of the pause? If so, please elaborate on the ability and potential impact of suspending those bonus incentives.
- Please reevaluate the net-to-gross ratio of any programs that are over budget and compare to the anticipated net-to-gross ratios associated with those same programs in 22A-0315EG.
- Please explain the interaction between stakeholder meetings and the 60/90 day process. Please also explain the specific process the Company utilized to change the rebates referenced in the First Supplement on page 2**.**
- Please confirm whether business EE programs to achieve natural gas savings have been impacted by the Company's recent actions. If natural gas savings programs have been impacted, please quantify the expected expenditures and savings for natural gas that are linked to those business programs that are currently paused and relate those figures to overall annual budgets and goals for natural gas savings.

14. How does overspending on a service to commercial or business customers affect the DSMCA charged to residential and non-residential between rate classes? We also find that it is premature to address the merits of any of the pending filings until parties have had an additional opportunity to respond and the Company addresses additional concerns of the Commission. 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,[3] 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 28, 2024, to any responses to the Company's First Supplement. We further request responses to the Company's Second Supplement no later than August 30, 2024.

[3] 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.").

II. ORDER

A. The Commission Orders That:

1. Public Service Company of Colorado ("Public Service") shall file responses to certain questions as a supplement ("Second Supplement") to its Motion to Address Electric Energy Efficiency Budgetary Pressures For Calendar Year 2024, and Request for Waiver or Variance as Necessary filed by on August 12, 2024, as discussed above, no later than August 28, 2024.

2. Parties may also respond to Public Service's August 19, 2024 Verified Supplement Responses filed pursuant to Decision No. C24-0593 by August 28, 2024. In addition, the Commission requests responses to the Public Service's August 28, 2024 Second Supplement no later than August 30, 2024.

3. This Decision is effective immediately upon its Issued Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING August 21, 2024.

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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners

ATTEST: A TRUE COPY

Rebecca E White

Rebecca E. White,
Director

COMMISSIONER TOM PLANT ABSENT.