

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0589EG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS COMBINED ELECTRIC AND NATRUAL GAS DEMAND-SIDE MANAGEMENT AND BENEFICIAL ELECTRIFICATION PLAN FOR CALENDAR YEARS 2024-2026.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ADDRESSING OUSTANDING MOTIONS,
SCHEDULING EVIDENTIARY AND PUBLIC COMMENT
HEARINGS, AND ESTABLISHING DEADLINES
AND PROCEDURES**

Mailed Date: February 9, 2024

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I. STATEMENT, SUMMARY AND BACKGROUND

A. Summary

1. This Decision addresses all outstanding motions; schedules a remote public comment hearing for March 19, 2024 at 11:30 a.m. and a remote evidentiary hearing for May 13, to 17, 2024; and establishes deadlines and procedures relating to the evidentiary hearing.

B. Procedural History

2. On December 1, 2023, Public Service Company of Colorado (Public Service or the Company) filed the above-captioned Application with testimony. At the same time, the Company filed a Motion for Variance and for Extension of the Company’s 2023 Demand-Side Management and Beneficial Electrification Plan (Motion for Extension of Plan); and its First Motion for Extraordinary Protection of Highly Confidential Information (Motion for Extraordinary Protection or Motion) with attachments.

3. On December 4, 2023, the Commission provided public notice of the Application and established a 30-day deadline to file interventions except for the Colorado Public Utilities Commission Trial Staff (Staff), whose deadline was set for seven days after the Notice expires.¹

4. On December 18, 2023, the City of Boulder (Boulder) filed a Motion for Permission to Intervene; and Staff filed a Notice of Intervention of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

5. On December 21, 2023, Western Resource Advocates (WRA) filed a Motion for Permissive Intervention; and Natural Resources Defense Council and the Sierra Club (collectively, Conservation Coalition) filed a Motion to Intervene.

¹ Notice of Application, filed on July 6, 2023.

6. On December 22, 2023, the Southwest Energy Efficiency Projects (SWEET) filed a Motion to Intervene and Entry of Appearance.

7. On December 26, 2023, the City and County of Denver (Denver) filed a Motion to Permissively Intervene.

8. On December 28, 2023, Energy Outreach Colorado (EOC) filed a Motion to Intervene and Entry of Appearance.

9. On January 2, 2024, the Colorado Energy Office (CEO) filed a Notice of Intervention of Right; the Office of the Utility Consumer Advocate (UCA) filed a Motion for Intervention as a Matter of Right, Request for Hearing, and Entry of Appearances; and the Energy Efficiency Business Coalition (EEBC) filed a Motion to Intervene and Entry of Appearance.

10. On January 3, 2024, Clean Energy Economy for the Region (CLEER) filed a Motion to Intervene; Climax Molybdenum Company (Climax) filed an Unopposed Motion to Intervene Permissively; the Colorado Energy Consumers (CEC) filed a Motion to Permissively Intervene and Request for Hearing; and Iconergy LTD (Iconergy) filed a Motion to Intervene.

11. During its weekly meeting held January 17, 2024, the Commission referred this matter for disposition to an Administrative Law Judge (ALJ) and directed Public Service to file Supplemental Direct Testimony addressing specific identified items within 20 days of the Decision's January 23, 2024 mail date.²

12. This matter was subsequently assigned to the undersigned ALJ, who informally directed the parties to submit a proposed procedural schedule by February 5, 2024.

² Decision No. C24-0054-I (mailed January 23, 2024).

13. On February 5, 2024, Public Service filed a Notice of Conferral and Unopposed Motion to Approve Consensus Procedural Schedule and Request for Waiver of Response Time (Motion to Approve Schedule).

II. RELEVANT LAW, FINDINGS, ANALYSIS AND CONCLUSIONS

A. Time to Issue a Final Commission Decision

14. Under § 40-6-109.5(1), C.R.S., when a party files testimony with an application, the Commission must issue a final decision within 120 days after the application is deemed complete, unless the Commission finds that additional time is necessary, in which case, this deadline may be extended by an additional 130-days.³ If the Commission does not make a determination that an application is complete within 15 days of the application's notice period's expiration, and otherwise does not find that the application is not complete or that more information is necessary, the application is automatically deemed complete.⁴

15. The Commission did not deem the Application complete or determine that the Application is not complete or that more information is necessary. As such, the Application was automatically deemed complete on January 18, 2024.⁵ Because the Company filed testimony with its Application, the Commission must issue a final decision within 120 days of January 18, 2024, unless the Commission finds that additional time is necessary. To meet this statutory deadline, a final Commission decision has to issue by May 17, 2024. This does not allow enough time for the parties to develop the record and to conduct discovery; to hold an evidentiary hearing; for a

³ § 40-6-109.5(1), C.R.S.

⁴ Rule 1303(c)(IV), 4 CCR 723-1.

⁵ This date is determined by adding 15 days to the date the Application's Notice period expired. Because the Notice period expired on January 3, 2024, the Application was automatically deemed complete per Rule 1303(c)(IV), 4 CCR 723-1 on January 18, 2024. *See* Notice of Application, filed December 4, 2023.

recommended decision to issue; for the parties to file exceptions; and for the Commission to address exceptions and issue a final decision. For these reasons, the ALJ finds that additional time is necessary, and therefore extends the statutory deadline for a final Commission decision by 130 days, as allowed by § 40-6-109.5(1), C.R.S. The resulting deadline for a final Commission decision to issue is September 24, 2024.

B. Interventions

16. Two classes of parties may intervene in proceedings such as this: parties with a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).

17. In addition, per Rule 1401(e), 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure, Staff may intervene of right in any Commission proceeding. Any other person or entity wishing to intervene of right must identify the basis for the legally protected right that may be affected by the proceeding.⁶

18. As relevant here, to permissively intervene, the party's intervention must:

. . . state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. . . . demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.⁷

⁶ Rule 1401(b), 4 CCR 723-1.

⁷ Rule 1401(c), 4 CCR 723-1.

19. The person or entity seeking to intervene bears the burden of proof that it has met the intervention standards and should be permitted to intervene.⁸

20. If a party does not file a response to a motion within the time prescribed for a response, the Commission may deem that failure as confessing the motion.⁹

21. Based on their Interventions, the ALJ concludes that Staff, the UCA and CEO have met the relevant legal standard to intervene as of right. As such, they are acknowledged as parties to this Proceeding.¹⁰

22. Public Service has not filed a response or objection to any of the other requests to intervene.¹¹ As such, the ALJ construes the remaining Interventions as unopposed.¹² Based on this, the information provided in their collective requests to intervene, and the relevant legal standards, the ALJ grants the remaining Interventions.

C. Motion for Extraordinary Protection of Highly Confidential Information

23. Rule 1101(b) requires that a motion seeking extraordinary protection of highly confidential information include: a detailed description of the information to be protected; state the specific relief sought and grounds therefor; advise the parties of the request and the subject matter of the information at issue; establish that the information at issue is highly confidential and that highly confidential protection is necessary because rules providing protection for confidential information offer insufficient protection; be accompanied by a proposed nondisclosure agreement and an affidavit with names of all persons who have access to the information and the timeframe

⁸ Rule 1500, 4 CCR 723-1.

⁹ Rule 1400(b), (d) and (c), 4 CCR 723-1.

¹⁰ See Staff's, the UCA's and CEO's Interventions and Rule 1401(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

¹¹ Responses to requests to permissively intervene must be filed within seven days. See Rule 1401(d), 4CCR 723-1

¹² In some cases, the Interventions directly state that Public Service does not oppose or takes no position on the Intervention. See e.g., CEC's Intervention at 1; Climax's Intervention at 1; EOC's Intervention at 1.

for protection; and either file the highly confidential information or establish why doing so would be overly burdensome, impractical or too sensitive for disclosure.¹³

24. Because no party filed a response objecting to the Company's Motion for Extraordinary Protection, the ALJ deems it confessed and unopposed.¹⁴ The Motion seeks extraordinary protection for information relating to: (1) hourly pricing, energy, and emissions data contained in EnCompass input and output files; (2) any information protected by a confidentiality clause of a power purchase agreement (PPA); (3) any customer data that does not comport with Commission Rules 3033(b) and 4033(b) (collectively, the 15/15 Rule); and (4) any documents or information that could be used to derive the above-described information. With its Motion, the Company filed proposed form nondisclosure agreements as Attachment A and B, and an Affidavit as Attachment C, identifying those with access to the highly confidential information, and requesting that the information be protected indefinitely. The Company did not file the relevant highly confidential information with its Motion because it relates to workpapers that are not part of the evidentiary record and information that has not yet been requested through discovery.¹⁵

25. The Company requests that access to the first two categories of information (and the fourth as applicable) be limited to: the Commission (including Commissioners, ALJs, and advisory staff and counsel); Staff, the UCA and their counsel; a reasonable number of attorneys and experts representing or working on behalf of an intervener who is not an energy developer, bidder or representative thereof, provided that they execute a nondisclosure agreement.¹⁶ As to the third category of information, the Company requests that access be limited to the Commission

¹³ Rule 1101(b), 4 CCR 723-1

¹⁴ See Rule 1401(d), 4 CCR 723-1.

¹⁵ Motion for Highly Confidential Protection at 9.

¹⁶ *Id.* at 3-4.

(including Commissioners, ALJs, and advisory staff and counsel); and Staff, the UCA and their counsel, provided nondisclosure agreements are signed.¹⁷ The Company requests that the highly confidential information be destroyed or returned to it once this Proceeding is concluded.¹⁸

26. The Company also asks that the Commission enter an order confirming that it is not required to provide native EnCompass files to anyone who does not hold an EnCompass license, given its proprietary nature.¹⁹ The Company submits that the Commission has previously confirmed that the Company cannot and need not provide proprietary EnCompass files to individuals without an EnCompass license.²⁰

27. The Company argues that its requests are consistent with prior Commission action.²¹ The Company explains that as the Commission has recognized, disclosure of the highly confidential information in the EnCompass input and output files, including the EnCompass-calculated marginal hourly energy costs and emissions data, could cause irreparable harm to the Company's trading operations, the Company's ability to solicit cost-effective resources and, ultimately, the Company's customers.²² The Company asserts that inappropriate disclosure of this highly confidential information could provide potential generators with competitive market pricing information that may be used to influence future contract pricing, bids, or certain financial transactions unfairly, to the detriment of customers.²³ The Company explains that energy developers or bidders could use this information to determine Public Service's projected marginal

¹⁷ *Id.* at 4-5.

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 6.

²¹ *Id.* at 5, citing Proceeding Nos. 21A-0141E, 21A-0625EG, 20A-0287EG, 22A-0315EG, 17A-0462EG and 22A-0309EG.

²² *Id.*, citing Decision No. C22-0665-I (mailed October 28, 2022) in Proceeding No. 22A-0315EG.

²³ *Id.* at 5-6.

costs for energy and capacity, as well as the financial modeling the Company uses to conduct trades. It asserts that this may adversely affect the Company's future bargaining position and ability to solicit least-cost resources and negotiate the most favorable contracts.²⁴

28. As to highly confidential information implicating existing PPAs, the Company explains that it has contractually committed to keep certain terms and conditions confidential, thereby binding it to maintain such confidentiality, absent an order from the Commission to the contrary.²⁵ The Company's request includes PPAs where, even though the PPA itself is public, Public Service has committed to the power producer to keep confidential various data relating to the producer's performance under the PPA and other projects to which the producer is a party (that Public Service may have reviewed under project due diligence).²⁶ The Company submits that the Commission has previously held that such information warrants highly confidential treatment.²⁷

29. Turning to the information relating to the 15/15 Rule, the Company explains that Rules 3033(b) and 4033(b) both provide that at a minimum, customer data aggregation must contain at least 15 customers, and within any customer class, no single customer's data may comprise 15 percent or more of the total customer data aggregated per customer class to generate the aggregated data report.²⁸ The Company anticipates receiving discovery requests that may violate the 15/15 Rule, such as requests relating to DSM and BE plan programs that have limited customer participation. As such, the Company proactively seeks highly confidential treatment for such customer data. The Company argues that its request is reasonable, in the public interest, and

²⁴ *Id.* at 6.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*, citing Decision No. C22-0665-I (mailed October 28, 2022) in Proceeding No. 22A-0315EG and Decision No. C21-0343-I (mailed June 11, 2021) in Proceeding No. 21A-0141E.

²⁸ *Id.* at 7, citing Rule 3033(b) of the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3 and Rule 4033(b) of the Commission's Rules Regulating Gas Utilities, 4 CCR 723-4.

consistent with the 15/15 Rule and past Commission decisions on this issue.²⁹ The Company also submits that affording extraordinary protection of such information is also consistent with Rules 1105, 3027 and 4027.³⁰

30. The ALJ finds that the Motion meets the requirements of Rule 1101(b), 4 CCR 723-1, and that the Company has established that the information for which it seeks extraordinary protection is highly confidential and warrants extraordinary protection. In addition, the ALJ also finds the Company's argument that it should not be required to produce native EnCompass files to anyone without an EnCompass license compelling given the proprietary nature of such software data. For the reasons and authorities discussed, those in the Motion for Extraordinary Protection, and because the Motion is unopposed, the ALJ grants the Motion for Extraordinary Protection.

D. Motion for Extension of Plan

31. Under Rule 1003(a), the Commission may grant a waiver or variance from tariffs, Commission Rules, and substantive requirements in Commission decisions for good cause shown.³¹ In making this determination, the Commission may consider hardship, equity, or more effective implementation of overall policy on an individual basis.³²

32. The Motion for Extension of Plan requests that the Commission extend the Company's current 2023 Electric and natural Gas Demand-Side Management (DSM) and Beneficial Electrification (BE) Plan in Proceeding No. 22A-0315EG (2023 Plan) so that it may

²⁹ *Id.*, citing Decision No. C22-0168-I at ¶¶ 9-11 (mailed March 17, 2022) in Proceeding No. 21A-0625EG; Decision No. R19-0922-I at ¶ 16 (mailed November 12, 2019) in Proceeding No. 19A-0369E.

³⁰ *Id.*, citing Rule 1101(b), 4 CCR 723-1; Rule 3027, 4 CCR 723-3, and Rule 4027, 4 CCR 723-4.

³¹ Rule 1003(a), 4 CCR 723-1.

³² *Id.*

remain in effect until the Plan in this Proceeding becomes effective.³³ The Company also asks that it be granted variances from directives in Paragraphs 88-90 of Decision No. C23-0413 (in Proceeding No. 22A-0309EG), Rules 4752 and 4753, any other Rules necessary to implement the Plan here.³⁴

33. As to its request to extend its 2023 Plan, the Company explains that its 2023 Plan expired at the end of the 2023 calendar year, and that the Plan in this Proceeding will not go into effect prior to the 2023 Plan expiring. The Company asserts that its request should be approved because continuing the 2023 Plan will provide customers with continuity in programming; promote administrative efficiency; and is consistent with prior Commission decisions routinely granting similar requests.³⁵ The Company also argues that its request is contemplated by Rule 4761(c), which allows a utility with 250,000 or more full-service customers to request the Commission to extend its currently effective DSM plan until its strategic issues proceeding is concluded if the application to open the strategic issues proceeding overlaps with the filing of a DSM plan application under Rule 4752(e).³⁶ The Company argues that this Rule acknowledges that an extension of a currently effective DSM plan allows a utility time to align its next DSM plan with the Commission's most recent policy goals and directives, and the importance of ensuring continuity in DSM programming.³⁷ The Company's 2022 Strategic Issues Proceeding overlapped with its July 1 DSM plan filing deadline, and only recently concluded (in August 2023). Since

³³ Motion for Extension of Plan at 1.

³⁴ *Id.*

³⁵ *Id.* at 7, citing Decision No. C23-0381 (mailed June 8, 2023) in Proceeding No. 22A-0315EG (the Company's 2023 DSM & BE Plan); Decision No. R21-0081 (mailed February 12, 2021) in Proceeding No. 20A-0287EG (the Company's 2021-2022 DSM Plan); Decision No. C18-0499 (mailed June 25, 2018) in Proceeding No. 17A-0462EG (the Company's 2019-2020 DSM Plan) and Decision No. R19-0807-I (mailed October 1, 2019) and Decision No. C21-0838 (mailed December 30, 2021) in Proceeding No. 19A-0369E (Company's Renewable Energy Standard Compliance Plan).

³⁶ *Id.* at 7-8, citing Rule 4761(c), 4 CCR 723-4.

³⁷ *Id.* at 8.

then, the Company states that it has worked diligently to prepare the Plan in this Proceeding to comply with the Commission's directives in the 2022 Strategic Issues Proceeding.³⁸

34. As to its Rule waiver requests, the Company explains that Rule 4752(e) requires it to file a prospective application to implement a DSM plan by July 1 of the final year of the currently effective DSM plan, but the Company's DSM plan was filed after this deadline due to many factors outside of its control, many of which relate to legislative requirements in Senate Bill 21-246, and anticipated changes to the Commission's Rules Regulating Gas Utilities, 4 CCR 723-4 (Gas Rules).³⁹ The Company has prepared the Plan filing here to align with the recently updated Gas Rules, and directives arising from its recently concluded 2022 Strategic Issues Proceeding (consistent with Rule 4753(g)). But since the final Decision in that Strategic Issues Proceeding was not issued until August 8, 2023, the Company did not have certainty about the requirements for this Plan until after the July 1 deadline in Rule 4752(e) passed.⁴⁰

35. The Company also requests a one-time variance from the requirement in Rule 4753 that a gas DSM plan must cover a DSM period of two years, unless otherwise ordered.⁴¹ The Company's Plan here covers a three-year period. The Company filed a three-year DSM Plan for many reasons, including that it will provide stability and continuity, promote administrative efficiency, and conserve administrative, Commission and legal resources.⁴² In the Company's 2022 Strategic Issues Proceeding, the Commission approved DSM and BE goals and budgets for a three-year period and required the Company to file its next Strategic Issues application in 2025.⁴³ The

³⁸ *Id.*

³⁹ *Id.* at 2-3.

⁴⁰ *Id.* at 3-4.

⁴¹ *Id.* at 4.

⁴² *Id.* at 5.

⁴³ *Id.*

Company submits that by filing a three-year Plan here, it avoids the need to file a single-year DSM plan in 2025 (for 2026), which would be litigated simultaneously with its 2025 Strategic Issues filing.⁴⁴ For all these reasons, the Company requests a variance of Rule 4753, if necessary, for its three-year Plan filed in this Proceeding.

36. The Company requests that it be granted a full variance of the Commission’s directive that it “continue to provide certain data regarding its DSM modeling that it agreed to provide as part of the settlement of its previous strategic issues proceeding, including confidential hourly marginal prices and emissions rates used to determine the avoided energy value of DSM plans” in Decision No. C23-0413 in Proceeding No. 22A-0309E (hereinafter Decision No. C23-0413).⁴⁵ In support, the Company explains that it has identified a number of inconsistencies attributable to reliance on marginal pricing to determine the marginal generation and marginal emissions in calculating marginal emissions rates.⁴⁶ It submits that it is more appropriate to use EnCompass’s system-wide emissions rate.⁴⁷ This will avoid potential inaccuracies in determining on a specific generator basis, the marginal emissions that are avoided, which should result in a more accurate representation of emissions rates related to the benefits of DSM and BE.⁴⁸ For all these reasons, the Company submits that the requested variance will allow it to more accurately capture the intended data.

37. Given that no party filed a response objecting to the Motion for Extension of Plan, ALJ deems it confessed and unopposed.⁴⁹ Because the requests are unopposed, and for the reasons

⁴⁴ *Id.*

⁴⁵ *Id.* at 5-6, quoting Decision No. C23-0413, ¶ 88 (mailed June 22, 2023) in Proceeding No. 22A-0309E (hereinafter, Decision No. C23-0413).

⁴⁶ *Id.* at 6.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *See* Rule 1401(d), 4 CCR 723-1.

the Company provides, the ALJ finds that the Company has shown good cause to grant all the requested variances except for the variance of the Commission's directives in Decision No. C23-0413. As to the Company's request for a variance of the Commission's directives in paragraphs 88-90 of Decision No. C23-0413, the Company fails to provide enough information to support its conclusion that system average emission rates are a better indicator than marginal rates. While the Company broadly references written testimony in this Proceeding, and generally states that it has found inaccuracies in the required data, it does cite to anything specific or explain the inaccuracies it has identified, and how that renders system average emission rates a better indicator than marginal rates. Notably, it is unclear whether the Company seeks to provide different information in lieu of the information it is required to provide by Decision No. C23-0413; the frequency in which such information will be provided (if at all); whether such information (if any) will be provided through filings with the Commission and if so, in what proceeding. Along these same lines, as the above issues demonstrate, since the Company seeks a variance of the Commission's decision in a different Proceeding, (No. 22A-0309E), that request is more properly made in that Proceeding.

38. For all these reasons, the ALJ grants the Company's request to extend its 2023 Plan, and for variances from Rules 4752 and 4753 and denies the Company's request for a variance of the Commission's directives in paragraphs 88-90 of Decision No. C23-0413.

E. Procedural Schedule

1. Deadlines, Discovery, and Hearings

39. The Company’s Motion to Approve Schedule states that none of the parties who filed Interventions in this Proceeding oppose the Motion or its requested relief.⁵⁰ Because the Motion is unopposed, the Company asks that the response time to it be waived, per Rule 1308(c).

40. The Motion suggests the following procedural schedule:

Event	Proposed Deadline or Date
Supplemental Direct Testimony	February 12, 2024
Answer Testimony	March 22, 2024
Rebuttal and Cross-Answer Testimony	April 19, 2024
Settlement Agreement and Stipulations	April 29, 2024
Settlement Testimony	May 3, 2024
Corrected Testimonial Exhibits	May 6, 2024
Non-Testimonial Exhibits	May 8, 2024
Exhibit and Witness Lists	May 8, 2024
Joint Witness Examination Matrix	May 8, 2024
Prehearing Motions	May 8, 2024
Responses to Prehearing Motions	May 10, 2024

⁵⁰ Motion to Approve Schedule at 1-2.

Event	Proposed Deadline or Date
Evidentiary Hearing	May 13 to 17, 2024
Statements of Position	June 14, 2024
Deadline for Final Commission Decision	September 24, 2024 ⁵¹

41. The Motion to Approve Schedule states that the parties request that the evidentiary hearing be held remotely; and that the parties agree that the discovery rules and procedures in Rule 1405 will govern discovery in this Proceeding.⁵² The Motion also states that CEO recommends that a public comment hearing be scheduled. If the ALJ finds this is necessary, the Company suggest that a public comment hearing be held either before the deadline for Answer Testimony or between the deadlines to file Answer Testimony and Rebuttal and Cross-Answer Testimony.⁵³

42. As the Motion to Approve Schedule is unopposed, the ALJ finds good cause to waive the response time to it and does so.

43. To start, the ALJ approves the parties' request for the hearing to be held remotely from May 13 to 17, 2024. Because the hearing will be remote, all documentary evidence will be presented electronically using a spreadsheet with hyperlinks to the parties' exhibits as they appear in the administrative record. That spreadsheet will be distributed to the parties before the hearing so that the parties may review it and confirm that it includes the exhibits they intend to offer into evidence.

44. As to the remaining proposed schedule, the ALJ finds that for the most part, the proposed schedule is reasonable and appropriate. As such, the ALJ will approve the vast majority

⁵¹ *Id.* at 2-3.

⁵² *Id.* at 3-4.

⁵³ *Id.* at 3.

of the proposed schedule. The ALJ does not approve the proposed deadlines to file Non-Testimonial Exhibits and Statements of Position (SOP). Starting with the former, the Motion suggests that Non-Testimonial Exhibits be filed on May 8, 2023. Given that the hearing will begin on May 13, 2024, this deadline does not provide enough time for Commission staff to create and circulate the hyperlinked spreadsheet that will be used during the hearing to present exhibits, and for the parties to review the spreadsheet before the hearing to confirm that it includes all the exhibits the parties intend to offer during the hearing. The proposed deadline would also prevent parties from filing prehearing motions concerning Non-Testimonial Exhibits given that prehearing motions are due on the same day that Non-Testimonial Exhibits must be filed. For the reasons discussed, the ALJ rejects the proposed May 8, 2024, deadline, and establishes a deadline to file Non-Testimonial Exhibits.

45. Turning to SOPs, the Motion suggests that SOPs be filed on June 14, 2024. While the ALJ understands why the parties may want a full month after the week-long hearing to file SOPs, such a deadline does not give the ALJ an appropriate amount of time to review and consider the SOPs before issuing a recommended decision within a timeframe that would allow the Commission to meet the statutory deadline to issue a final decision. With 16 parties, a week-long evidentiary hearing, significant complex issues, and a voluminous record, SOPs filed within an appropriate timeframe may be particularly useful in assisting the ALJ to reach a decision on the merits. As such, it is important for SOPs to be filed within an appropriate timeframe. For the reasons discussed, the ALJ will establish a June 7, 2024 deadline to file SOPs. This allows the parties three weeks to draft and file SOPs, which the ALJ finds is sufficient under the circumstances.

46. The ALJ approves the Motion's remaining proposed procedural schedule, parties' agreements concerning discovery, and grants CEO's request to schedule a public comment hearing.⁵⁴

47. Attachment A hereto includes important technical information and requirements to facilitate accommodating remote hearing participation. Persons wishing to observe but not participate in the hearing are encouraged to observe the hearing via the Commission's webcast, rather than join the Zoom hearing.⁵⁵ This will help minimize background noise and avoid issues that may arise should the ALJ need to hold confidential or highly confidential hearing session.

48. To minimize the potential that the 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' counsel by email before the hearing, and the parties will be prohibited from distributing that information to anyone not participating in the hearing.⁵⁶ Counsel and the parties are responsible for ensuring that their witnesses receive the Zoom information needed to join the hearing.

49. Attachment B includes information and requirements to facilitate electronic evidentiary presentations at the hearing. Many requirements in Attachment B and in this Decision's ordering paragraphs apply to formatting, marking, and filing exhibits, and are critical to ensure a smooth evidentiary presentation. The ALJ has observed parties in other proceedings repeatedly

⁵⁴ Given that the Supplemental Direct Testimony deadline is closely approaching, the ALJ informally contacted the parties via email on February 7, 2024 to inform them that this deadline would be approved. In any event, the ALJ finds that Public Service is not prejudiced by the timing of this Decision approving the proposed February 12, 2024 deadline, as Decision No. C24-0054-I already establishes February 12, 2024 as the deadline to file Supplemental Direct Testimony. Decision No. C24-0054-I at 1 and 4.

⁵⁵ Parties wishing to observe the hearing via webcast may do so by going to the following link: <https://puc.colorado.gov/webcasts> and selecting the assigned hearing room's webcast. The Commission's public calendar will include information on the assigned hearing room and may be found at: <https://puc.colorado.gov/>, under the "Calendar of Events."

⁵⁶ Approximately one week before the hearing, counsel will receive an email with information needed to join the hearing at the email addresses on file with the Commission for this proceeding. Counsel must ensure that the Commission has their most current email address.

failing to comply with these formatting, marking, and filing requirements. Despite continual reminders in procedural orders, many of the same errors continue. *Common errors include failing to include a brief description of attachments to exhibits in exhibit lists; failing to title attachments to exhibits in E-Filings to include the title of the document (i.e., the substantive nature of the attachment), but instead titling it in E-Filings solely with the exhibit and attachment numbers; failing to follow procedures for exhibits and attachments that include confidential or highly confidential information; and failing to follow identification requirements for revised exhibits or attachments thereto.* No party should assume that these examples do not apply to them.

50. These repeated errors have resulted in a tremendous waste of resources—both by Commission support staff, who have been forced to carefully review each filed exhibit and contact parties to point out errors—and by parties who have to reformat and refile exhibits. It has also created unnecessary confusion as to which exhibits will be offered into evidence, particularly when parties incorrectly number their exhibits, fail to correctly mark revised exhibits, or fail to file a public version of confidential or highly confidential exhibits. As such, the ALJ again *implores the parties to ensure that they follow all procedural requirements relating to exhibits and attachments thereto.*⁵⁷

51. *The parties are on notice* that consistent with Commission practice, friendly cross-examination will not be permitted during the evidentiary hearing.

⁵⁷ Any party who is uncertain as to whether they have correctly followed the required procedures may contact Ms. Casey Federico at Casey.Federico@state.co.us or Ms. Stephanie Kunkel at Stephanie.Kunkle@state.co.us to confirm that they have correct followed the procedural requirements.

2. Public Comment Hearing

52. As noted above, the ALJ will schedule a public comment. As set forth in the ordering paragraphs below, the ALJ schedules a remote public comment hearing for March 19, 2024 at 11:30 a.m.⁵⁸ The ALJ finds that holding the hearing remotely facilitates easier public participation in the public comment hearing and therefore, serves the public interest.

a. Observing or Participating in Public Comment Hearing

53. The March 19, 2024 public comment hearing will be remote, using the web-hosted videoconferencing service, Zoom. The Zoom information to join the public comment hearing will be posted on the Commission's calendar of events, on the Commission's website at: <https://puc.colorado.gov/pucalendar>.

54. To ensure a clear record and orderly hearing progression, interested persons are strongly encouraged to participate by videoconference. Nevertheless, interested persons have the option to participate by telephone.

55. During the public comment hearing, the ALJ will take action as necessary to facilitate a clear and understandable record, and to ensure the orderly progress of the hearing. For the same reasons, all participants are required to: (a) mute their microphone during the hearing until called upon by the ALJ; (b) ensure they are participating from a location with minimal or no background noise; (c) not connect to the hearing using multiple devices located in the same room (which causes audio feedback); and (d) input their full name into Zoom when prompted to do so. Participants are encouraged to use a headset to listen to the hearing, as this may also help avoid background noise and feedback when they speak. Participants are encouraged to use a computer,

⁵⁸ This is before the deadline to file Answer Testimony, consistent with the Company's suggestion.

smart phone, or tablet that is connected to the internet and has an operational microphone, speaker, and camera.

56. Attachment C to this Decision provides step-by-step technical instructions and requirements to participate by videoconference using a computer. This is intended to ensure that the remote hearing proceeds efficiently. Hence, it is important that videoconference participants carefully review and follow all requirements in this Decision and Attachment C.

57. The public comment hearing is scheduled to commence at 11:30 a.m., and consistent with Commission practice, will conclude no later than 5:30 p.m., or when all public comments have been received, whichever is *earlier*. The hearing will not be held open for public comments after all those who have appeared have provided public comment, even if this means concluding the hearing well before 5:30 p.m. For example, if all those who appear at the hearing have provided public comment by 12:00 p.m. or sooner, the hearing will be adjourned. This also means that anyone who chooses to join the public comment hearing after the 11:30 a.m. start time assumes the risk that the hearing will already be concluded.

58. The Commission strives to accommodate all members of the public at its hearings by providing services for foreign language users and persons with disabilities upon receipt of a reasonable accommodation request. Interested persons requesting an accommodation for the public comment hearing should complete the Language Access Form under the “How to Make Comments” tab at <https://puc.colorado.gov/how-to-participate> at least one week prior to the hearing. Requests for accommodation can also be made directly by contacting Holly Bise at 303-894-2024, or holly.bise@state.co.us.

59. Consistent with Commission practice, the public comment hearing will be webcast on the Commission’s website. Persons wishing to observe, but not participate in the hearing may

do so by observing the webcast of the rulemaking hearing and need not join the hearing by telephone or videoconference. To observe the hearing by webcast, enter this link in the web browser <https://www.youtube.com/@COPublicUtilitiesCommission/featured>. This link connects to the Commission's YouTube webpage, where interested persons may observe live and recorded hearings.

b. Methods to Submit Public Comments

60. Interested persons may provide written or oral comments. Although the Commission prefers written comments over oral comments, they are given the same weight.

61. Interested persons are encouraged to submit written comments through either: (a) the Commission's Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this Proceeding; or (b) the Commission's website at <https://puc.colorado.gov/> by clicking on the "FILE A COMMENT OR COMPLAINT" link. Anyone using the latter option should ensure that their comments include this Proceeding number.

62. Verbal comments can be provided during the scheduled public comment hearing, or by leaving a voice mail message at 303-869-3490. Voice mail public comments will be placed in the record of this Proceeding and should include a reference to this Proceeding number.

III. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, the deadline for a final Commission decision to issue in this Proceeding is extended by 130 days to September 24, 2024, per § 40-6-109.5(1), C.R.S.

2. The Colorado Public Utilities Commission Trial Staff (Staff), the Colorado Energy Office (CEO), and the Colorado Office of the Utility Consumer Advocate (UCA) are acknowledged as parties as of right in this Proceeding. Consistent with the above discussion, the Motions seeking to permissively intervene filed by the City of Boulder (Boulder); Western Resource Advocates (WRA); Natural Resources Defense Council and the Sierra Club (collectively, Conservation Coalition); Southwest Energy Efficiency Projects (SWEEP); the City and County of Denver (Denver); Energy Outreach Colorado (EOC); Energy Efficiency Business Coalition (EEBC); Clean Energy Economy for the Region (CLEER); Climax Molybdenum Company (Climax); the Colorado Energy Consumers (CEC); and Iconergy LTD (Iconergy) are granted.

3. Based on the foregoing, in addition to Public Service Company of Colorado (Public Service), the parties to this Proceeding are Boulder, Staff, WRA, the Conservation Coalition, SWEEP, Denver, EOC, CEO, the UCA, EEBC, CLEER, Climax, CEC and Iconergy.

4. Public Service's First Motion for Extraordinary Protection of Highly Confidential Information filed on December 1, 2023 is granted.

5. The Motion for Variance and for Extension of the Company's 2023 Demand-Side Management and Beneficial Electrification Plan filed on December 1, 2023 is granted in part, and denied in part, consistent with the above discussion.

6. The response time to Public Service's Notice of Conferral and Unopposed Motion to Approve Consensus Procedural Schedule and Request for Waiver of Response Time (Motion) filed on February 5, 2024 is waived. The Motion is granted in part and denied in part, consistent with the above discussion and the ordering paragraphs below.

7. A remote public comment hearing on the above-captioned Application is scheduled as follows:

DATE: March 19, 2024

TIMES: 11:30 a.m., continuing until concluded but not later than 5:30 p.m.

PLACE: By video conference or telephone using Zoom information available on the Commission's calendar of events at:
<https://puc.colorado.gov/puccalendar>.

8. Anyone participating in the public comment hearing by videoconference must comply with the requirements in Attachment C to this Decision, which is incorporated as if fully set forth.

9. A remote evidentiary hearing on the above-captioned Application is scheduled as follows:

DATE: May 13 to 17, 2024

TIMES: 9:00 a.m. each day

PLACE: By video conference using Zoom.

10. The parties are responsible for sharing the link, meeting ID code, and passcode with witnesses and others participating in the evidentiary hearing remotely. Participants in the hearing may not distribute the link, meeting ID code, and passcode to anyone not participating in the hearing.

11. All parties must comply with the requirements in Attachments A and B to this Decision, which are incorporated as if fully set forth.

12. Non-participants in the evidentiary or public comment hearing may observe the hearing live through the Commission's webcast for the Hearing Room assigned for each of the above hearing dates, which may be accessed at this link: <https://puc.colorado.gov/webcasts>.

13. **Supplemental Direct Testimony Deadline.** By February 12, 2024, Public Service's Supplemental Direct Testimony must be filed and served.

14. **Answer Testimony Deadline.** By March 22, 2024, Interveners' answer testimony must be filed and served.

15. **Rebuttal and Cross-Answer Testimony Deadline.** By April 19, 2024, Public Service's rebuttal testimony, and Interveners' cross-answer testimony must be filed and served.

16. **Deadline for Stipulations and Settlement Agreements.** By April 29, 2024, the parties must file and serve any stipulations and settlement agreements.

17. **Deadline for Settlement Testimony.** By May 3, 2024, the parties must file and serve testimony in support of or in response to any settlement agreement that is filed.

18. **Corrections, Modifications, and Amendments to Testimonial Exhibits.**

a. By May 6, 2024, the parties must file and serve any corrected, modified, or amended testimonial exhibits and attachments thereto (*i.e.*, corrections to answer, rebuttal, and cross-answer testimony and attachments).

b. The parties may make corrections to testimonial exhibits and attachments thereto without filing a motion seeking leave to do so. Corrections include minor changes, such as fixing typographical or formatting errors. Corrections do not include material or substantive changes. Material or substantive changes to a testimonial hearing exhibit or attachment thereto amount to amending or modifying such documents. Any party wishing to amend or modify a

testimonial exhibit or attachment thereto must file a motion establishing good cause; such a motion must be filed as soon as the party becomes aware of the need to amend or modify the filing. The parties must confer with each other prior to filing such a motion. Unreasonable delay in filing such a motion is grounds to deny the motion.

19. **Deadline for Non-Testimonial Hearing Exhibits.** By May 6, 2024, the parties must file and serve any non-testimonial hearing exhibits that they plan to offer into evidence (*i.e.*, exhibits not already filed per other deadlines). The parties are not required to pre-file and serve hearing exhibits which may be used solely for impeachment, to refresh recollection, or for rebuttal. *The parties are on notice* that if they do not prefile an exhibit for any of these reasons, they must establish at hearing that the exhibit is being used for impeachment or to refresh recollection consistent with the requirements of Rules 612 and 613 of the Colorado Rules of Evidence, or for rebuttal.

20. May 6, 2024 is also the deadline to file ***final versions of all exhibits***, as referenced in Attachment B hereto.

21. Any party may use any other party's hearing exhibits during the course of the hearing and should not file them separately.

22. **Deadline for Hearing Exhibit and Witness Lists.** By May 8, 2024, the parties must file and serve complete exhibit and witness lists. Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information. Exhibit lists must identify the hearing exhibit and attachment numbers, include the full substantive title of each hearing exhibit ***and attachment(s)*** thereto, and include a brief description of each hearing exhibit ***and attachment(s)*** thereto that the party intends to offer into evidence during the evidentiary

hearing. Describing or titling a hearing exhibit or attachment thereto solely by identifying the exhibit or attachment number *does not meet* this requirement. For example, exhibits lists that describe or title a hearing exhibit or attachment thereto as “Hearing Exhibit 100” or “Hearing Exhibit 100, Attachment ABC-1” without including the substantive title of the document and information as to substantive nature or content of the exhibit or attachment *do not comply with this requirement.*

23. **Deadline for Joint Witness Examination Matrix.** By May 8, 2024, the parties must file a joint witness examination matrix listing all the witnesses the parties anticipate will testify at the hearing and the anticipated amount of time each party will use to examine the witnesses. To the extent practicable, the witnesses should be listed in the order in which they will be called. The parties also must assume that the Administrative Law Judge will use some time to examine witnesses.

24. **Deadlines for Prehearing Motions and Responses Thereto.** By May 8, 2024, the parties must file and serve any prehearing motions. By May 10, 2024, the parties must file and serve responses to prehearing motions.

25. **Deadline for Statements of Position.** By June 7, 2024, the parties must file and serve their Statements of Position.

26. **Hearing Exhibit Number Block Assignments.** In order to efficiently organize exhibits that will be presented during the evidentiary hearing, all parties must use a unified numbering system for all hearing exhibits, consistent with the directions in Attachment B, using hearing exhibits within their assigned exhibit number blocks. The parties are assigned the following hearing exhibit numbers:

Party	Assigned Hearing Exhibit Numbers
Public Service	100 to 299
Boulder	300 to 399
Staff	400 to 499
WRA	500 to 599
Conservation Coalition	600 to 699
SWEEP	700 to 799
Denver	800 to 899
EOC	900 to 999
CEO	1000 to 1099
UCA	1100 to 1199
EEBC	1200 to 1299
CLEER	1300 to 1399
Climax	1400 to 1499
CEC	1500 to 1599
Iconergy	1600 to 1699

27. If Public Service, Staff, WRA, the Conservation Coalition, SWEEP, Denver, or EOC require more exhibit numbers than assigned, they may use the same numerical sequence of exhibit numbers assigned to them, but in the 2000 range (*e.g.*, Public Service will use hearing exhibit numbers 2100 to 2299; Boulder will use hearing exhibit numbers 2300 to 2399, *etc.*). If CEO, UCA, EEBC, CLEER, Climax, CEC or Iconergy require more exhibit numbers than assigned, they may use the same numerical sequence of exhibit numbers assigned to them, but in the 3000 range (*e.g.*, CEO will use hearing exhibit numbers 3000 to 3099; UCA will use hearing exhibit numbers 3100 to 3199, *etc.*).

28. Hearing Exhibit 1700 is reserved for the hyperlinked spreadsheet that will be used during the hearing to present evidence.

29. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director