

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.

**INTERIM COMMISSION DECISION: (1) DEEMING
APPLICATION COMPLETE; (2) SETTING MATTER FOR
HEARING *EN BANC*; (3) ESTABLISHING PARTIES; (4)
REQUIRING SUPPLEMENTAL DIRECT TESTIMONY;
(5) SCHEDULING PREHEARING CONFERENCE;
(6) REQUIRING PARTIES TO CONFER ON A
PROCEDURAL SCHEDULE THAT INCLUDES
SUPPLEMENTAL DIRECT TESTIMONY; AND
(7) SETTING 10-DAY RESPONSE TIME TO
OUTSTANDING MOTIONS**

Mailed Date: September 8, 2022

Adopted Date: August 31 and September 7, 2022

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I. BY THE COMMISSION**A. Statement**

1. By this Decision, the Commission deems complete and sets for hearing before the Commission *en banc* the Application of Public Service Company of Colorado (Public Service or the Company) filed on July 1, 2022, in which the Company requests the Commission approve its 2023 Electric and Natural Gas Demand-Side Management (DSM) and Beneficial Electrification (BE) Plan (2023 DSM & BE Plan or Plan).

2. The Commission grants the requests for permissive intervention filed by the City and County of Denver (Denver), the City of Boulder (Boulder), Climax Molybdenum Company (Climax), Colorado Energy Consumers Group (CEC), Energy Efficiency Business Coalition (EEBC), Energy Outreach Colorado (EOC), Iconergy LTD (Iconergy), Southwest Energy Efficiency Project (SWEEP), and Western Resource Advocates (WRA). The Commission acknowledges the notices of intervention of right filed by Trial Staff of the Commission (Staff), the Office of the Utility Consumer Advocate (UCA), and the Colorado Energy Office (CEO).

3. The Commission sets a prehearing conference for September 16, 2022 and requires Public Service to confer with the established parties and file a proposed procedural schedule no later than September 9, 2022. The proposed procedural schedule should address discovery processes and accommodate the filing of Supplemental Direct Testimony.

B. Procedural History

4. On July 1, 2022, Public Service filed its Application and Direct Testimony requesting Commission approval of the Company's 2023 DSM & BE Plan. Public Service states, while the Company first introduced its existing BE offerings as part of its 2021-22 DSM Plan, this

filing is the Company's first DSM Plan to incorporate the new BE Plan elements required by Senate Bill 21-246, effective September 7, 2021.

5. Concurrent with its Application, Public Service filed a motion on July 1, 2022, requesting the Commission grant an extension to allow the Company's current 2021-22 DSM Plan to remain in place, as approved in Proceeding No. 20A-0287EG, until the Company's 2023 DSM & BE Plan becomes effective following a final decision in this Proceeding (Motion to Extend 2021-22 DSM Plan).

6. Also concurrent with its Application, Public Service filed a motion on July 1, 2022, requesting the Commission grant a variance from Rules 4753(k) and 4756(b) of the Commission's Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4, as well as any additional waivers or variances necessary to implement the Company's 2023 DSM & BE Plan (Motion for Variance).

7. The Commission issued a Notice of Application Filed on July 8, 2022. The Notice set a 30-day intervention period that ran through August 8, 2022.

8. On July 21, 2022, Staff filed a notice of intervention of right. On July 22, 2022, UCA filed a notice of intervention of right. On August 8, 2022, CEO filed a notice of intervention of right.

9. On July 22, 2022, Denver and CEC filed motions for permissive intervention.

10. On August 3, 2022, Boulder filed a motion for permissive intervention.

11. On August 5, 2022, EEBC, EOC, and SWEEP filed motions for permissive intervention.

12. On August 8, 2022, Climax, Iconergy, and WRA filed motions for permissive intervention.

13. On August 15, 2022, Public Service filed a response objecting to Iconergy's motion for permissive intervention.

14. On August 23, 2022, Iconergy filed a motion for leave to reply to Public Service's response to its motion to intervene.

15. On August 25, 2022, UCA filed a motion requesting that the Commission order Public Service to file Supplemental Direct Testimony addressing certain issues relating to: (1) the Company's outreach in income qualified and disproportionately impacted communities; and (2) the impact of the recently enacted federal Inflation Reduction Act of 2022 on the Company's proposed DSM and BE plans (Motion to Order Supplemental Direct Testimony).

C. Completeness

16. The Commission finds the Application contains all the information required by applicable Commission Rules and is therefore deemed complete for purposes of § 40-6-109.5, C.R.S.¹

D. *En Banc* Hearing

17. The Commission finds good cause to set the Application for hearing before the Commission *en banc*. The Application raises significant policy questions, as well as questions of statutory interpretation, that warrant an evidentiary hearing before the Commissioners.

E. Establishment of Parties

18. The Commission acknowledges the notices of intervention of right filed Staff, UCA, and CEO.

¹ The Commission acknowledges the Application automatically deemed complete on August 22, 2022, for purposes of the statutory deadline for a final Commission decision pursuant to § 40-6-109.5, C.R.S.

19. Rule 1401(c) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, requires persons seeking permissive intervention to show the following, in pertinent part:

A motion to permissively intervene shall 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. The motion must 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.

20. Pursuant to Rule 1500, 4 CCR 723-1, the person seeking leave to intervene by permission bears the burden of proof with respect to the relief sought.

1. Denver

21. Denver is a customer of Public Service, and its citizens are customers of Public Service. Denver intends to address: (a) the proposed electric and gas DSM and BE budgets and associated energy savings targets; (b) the proposed electric and gas demand reduction and demand response targets; and (c) the proposed program and product options and consideration of which customers are eligible to participate, how customers receive the services, who provides those services, and how the programs will be evaluated and monitored.

22. We find Denver has adequately demonstrated that its pecuniary or tangible interests will be affected and would not otherwise be represented by other parties in this Proceeding. We therefore grant its motion to intervene.

2. Boulder

23. Boulder is a large customer of Public Service, and its citizens and businesses are also customers of Public Service. Boulder plans on addressing: (a) upcoming and ongoing challenges in DSM; (b) near-term and future opportunities for BE deployment; (c) the relationship

of DSM to local building codes; (d) the calculation of avoided upstream methane emissions; and (e) the value of avoided capacity, the avoided transmission and distribution cost, the social cost of carbon and the social cost of methane.

24. We find Boulder has adequately demonstrated that its pecuniary or tangible interests will be affected and would not otherwise be represented by other parties in this Proceeding. We therefore grant its motion to intervene.

3. Climax

25. Climax states it is one of Public Service's largest customers and as such is subject to Public Service's electric Demand Side Management Cost Adjustment rate rider and other charges that may be implicated by Public Service's proposals. Climax states it has a substantial interest in ensuring the proposed 2023 electric DSM and BE programs define appropriate goals, are designed to achieve their defined goals, and do so in a cost-effective manner, while maintaining just and reasonable rates. Climax states the outcome in this Proceeding will directly and substantially affect Climax's cost, and possibly its reliability, of electric and gas service that are necessary for mining and milling molybdenum.

26. We find Climax has adequately demonstrated that its pecuniary or tangible interests will be affected and would not otherwise be represented by other parties in this Proceeding. We therefore grant its motion to intervene.

4. CEC

27. CEC is an unincorporated association of corporate entities that operate facilities within Public Service's service territory and purchase electricity and related services from Public Service. CEC asserts that CEC's members have a significant interest in ensuring access to DSM programs, ensuring the cost-effectiveness of such programs and the overall program portfolio, and

the overall size and management of the proposed budgets and savings goals. CEC states it has meaningfully participated and contributed to proceedings of similar nature over the past decade. CEC's members are all large commercial and industrial electric customers with respectively unique service requirements. It claims no party or putative intervenor could adequately represent its interests due to the unique service requirements and characteristics of each CEC member, and of CEC as a group.

28. We find CEC has adequately demonstrated that its pecuniary or tangible interests will be affected and would not otherwise be represented by other parties in this Proceeding. We therefore grant its motion to intervene.

5. EEBC

29. EEBC is a non-profit whose mission is to advocate for policies, programs, and business practices that will benefit and promote the market for energy efficiency technologies, products, and services in Colorado. EEBC has over 100 business members manufacturing, distributing, and selling products and services related to residential and commercial DSM technologies. EEBC has previously participated in Commission proceedings, such as Public Service's previous DSM plan and strategic issues plan proceedings.

30. We find EEBC has adequately demonstrated that its pecuniary or tangible interests will be affected and would not otherwise be represented by other parties in this Proceeding. We therefore grant its motion to intervene.

6. EOC

31. EOC's mission is ensuring that income-qualified Colorado households can meet their home energy needs. Pursuant to § 40-8.5-104, C.R.S., EOC collects and disburses low-income energy assistance funds, as well as voluntary contributions from utility customers pursuant

to the Low-Income Energy Assistance Act. EOC thus asserts it has a specific interest in advocating for income-qualified customers and has a tangible and pecuniary interest in ensuring that its services are not required for a growing number of Colorado citizens.

32. We find EOC has adequately demonstrated that its pecuniary or tangible interests will be affected and would not otherwise be represented by other parties in this Proceeding. We therefore grant its motion to intervene.

7. Iconergy

33. Iconergy operates a decarbonization and sustainability firm within Public Service's service territory. Iconergy states it presently participates in Public Service DSM programs and has done so in the past but, recently, has not been permitted by the Company to participate in specific programs. Among the issues it may address are Public Service's selection of qualified DSM providers, their ability to participate in Public Service programs, the qualifications required, adherence to Public Service's procurement process, and transparency of the provider selection process. Iconergy also has concerns with Public Service's building efficiency programs, the resources devoted to them, the rebates offered, and how provider qualifications are determined.

34. Public Service opposes Iconergy's intervention. Public Service states that Iconergy fails to identify good cause explaining why it represents different interests from those already being represented by its trade association, EEBC. Public Service also states Iconergy's motion to intervene rehashes numerous allegations it already made in a complaint against Public Service, which the Commission dismissed.

35. Iconergy filed a motion for leave to reply to Public Service's response opposing its intervention. We find good cause to grant the motion and will consider the reply. In its reply, Iconergy disputes Public Service's assertion that Iconergy desires to relitigate its complaint here

and states instead that it seeks to participate in this Proceeding because its pecuniary and tangible interests are implicated. Iconergy also states that dismissal of the prior complaint against Public Service was without prejudice, thus without any decision on the merits. Iconergy adds that EEBC does not speak for Iconergy's direct interests and further Iconergy does not know at this point what issues EEBC will address in this Proceeding.

36. We find Iconergy has adequately demonstrated that its pecuniary or tangible interests will be affected and would not otherwise be represented by other parties in this Proceeding. We therefore grant its motion to intervene. We do, however, acknowledge the Company's concerns and we therefore direct Iconergy to focus its litigation, as it states it will, on the issues before the Commission in this Proceeding.

8. SWEEP

37. SWEEP is a non-profit whose mission is to advance energy efficiency and clean transportation, and to expand the economic and environmental benefits that energy efficiency and electric vehicles provide. SWEEP has participated in several past Commission proceedings, including all of Public Service's previous DSM strategic issues and DSM plan proceedings.

38. We find SWEEP has adequately demonstrated that its pecuniary or tangible interests will be affected and would not otherwise be represented by other parties in this Proceeding. We therefore grant its motion to intervene.

9. WRA

39. WRA is a nonprofit conservation organization and claims a tangible interest in protecting the environment through reduction of emissions from the electricity sector. WRA's intervention pleading identifies specific components of the Company's filing that it believes

directly impact its interest in protecting the environment through reducing emissions from the electric utility, gas utility, and buildings sectors.

40. We find WRA has adequately demonstrated that its pecuniary or tangible interests will be affected and would not otherwise be represented by other parties in this Proceeding. We therefore grant its motion to intervene.

41. The following are parties to this Proceeding: Public Service, Staff, UCA, CEO, Denver, Boulder, Climax, CEC, EEBC, EOC, Iconergy, SWEEP, and WRA. Intervenors are reminded to seek efficiencies through conferral where their respective positions align such that duplicative pleadings or positions can be provided concisely, and jointly, if possible.

F. Supplemental Direct Testimony

42. On August 25, 2022, UCA filed an unopposed motion in this proceeding requesting the Commission order Public Service to file supplemental direct testimony based in part on House Bill (HB) 21-1266, the Environmental Justice Act. UCA argues that the Commission should require the Company to file supplemental direct testimony describing any outreach it conducted in income qualified and disproportionately impacted communities prior to filing this application addressing its proposed plans. Further still, UCA requests that Public Service provide Supplemental Direct Testimony on the impact, if any of H.R.5376 known as the Inflation Reduction Act of 2022, which became effective on August 19, 2022.

43. Section 24-4-109(2)(b), C.R.S. explicitly defines “agency” as used in that subsection to “mean [] the air quality control commission created in [§ 25-7-104, C.R.S.].” HB 21-1266 further established the Environmental Justice Action Task Force (“Task Force”) to discuss, among other items, whether “agency” should include entities in addition to those identified in § 24-4-109(2)(b), C.R.S., and make recommendations to the general assembly on potential

modifications to definitions established in statute.² The Commission and other entities are currently participating in ongoing Task Force processes. We therefore find that the reasoning in UCA's motion seeking to require supplemental direct based on HB 21-1266 is premature given the ongoing Task Force processes, and inconsistent with § 24-4-109(2)(b), C.R.S.

44. Nevertheless, although we do not require supplemental direct testimony in this case as requested by UCA, parties to this proceeding, including UCA, may pursue relevant issues through discovery processes and testimony filings.³ In addition, the Commission retains broad authority to seek and require supplemental testimony pertinent to the record in this proceeding.

45. To that end, the Commission concludes that it is necessary for Public Service to augment the record in this Proceeding with additional information prior to the intervening parties' opportunity to file Answer Testimony regarding the IRA.

46. The IRA modifies and extends tax credits related to renewables, geothermal, energy efficiency home credits, and energy storage, as well as rebates energy efficiency products, and home and commercial electrification products and appliances. The Commission recognizes that this is a one-year DSM/BE Plan that coincides with the introduction of substantial federal incentives and tax credits.

47. Therefore, Public Service should provide supplemental direct testimony on the following questions regarding the IRA.

- a) The Company should identify potential changes to its cost-benefit analysis for programs that may be impacted by incentives (both upfront as well as tax credits) in place beginning in 2023.

² See §24-4-109(2)(a)(I), C.R.S.

³ While supplemental direct testimony on disproportionately impacted community and income qualified customer considerations are not required in this case based on HB 21-1266, parties may continue to argue these and other issues importance and relevance throughout the proceeding.

- b) What impacts will the IRA's incentives have on the Company meeting its stated energy and demand savings forecasts and how will the proposed performance incentives be impacted with greater non-utility funding available to customers?
- c) For each of the incentives listed in Hearing Exhibit 201, pg. 21, please identify the corresponding federal incentive available in 2023, along with any income restrictions.
- d) Please identify the potential impacts of the IRA on the Company's proposed DSM/BE Income Qualified and Disproportionately Impacted programs, particularly focused on weatherization, and whole home energy audits.

G. Prehearing Conference and Conferral

48. The Commission schedules a prehearing conference for September 16, 2022, from 2:00 p.m. to 4:00 p.m. At the remote prehearing conference, an evidentiary hearing will be scheduled, and other procedural deadlines will be established.

49. A party's failure to appear at the prehearing conference may result in decisions adverse to their interests. The Commission deems any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

50. We direct Public Service to confer with the parties to develop a proposed procedural schedule, including provisions for discovery and for the filing of Supplemental Direct Testimony, consistent with the discussion above. Public Service shall file the proposed procedural schedule no later than 5:00 p.m. on September 9, 2022. We advise parties that the Commission prefers the evidentiary hearing in this matter be conducted over consecutive days, concluding no later than January 15, 2023. Providing the Commission substantially approves the proposed schedule, the Commission may vacate the scheduled prehearing conference.

H. Response Time to Motions

51. The Commission establishes a **10-day response time, from the effective date of this Decision**, for parties to file any responses to Public Service's Motion to Extend 2021-22 DSM Plan and Public Service's Motion for Variance.

52. Parties are directed to address in their response whether the requests in these motions are best addressed early in the Proceeding or if they should be considered as part of a future Commission decision after further testimony and evidence are presented.

II. ORDER**A. It Is Ordered That:**

1. The Application for approval of its 2023 Electric and Natural Gas Demand-Side Management and Beneficial Electrification Plan filed by Public Service Company of Colorado on July 1, 2022, is set for hearing *en banc*.

2. The application is deemed complete, consistent with the discussion above.

3. The notices of intervention filed by Trial Staff of the Commission on July 21, 2022, by the Office of the Utility Consumer Advocate on July 22, 2022, and by the Colorado Energy Office on August 8, 2022, are acknowledged.

4. The motion to intervene filed by the City and County of Denver on July 22, 2022, is granted.

5. The motion to intervene filed by the City of Boulder on August 3, 2022, is granted.

6. The motion to intervene filed by Climax Molybdenum Company on August 8, 2022, is granted.

7. The motion to intervene filed by the Colorado Energy Consumers Group on July 22, 2022, is granted.

8. The motion to intervene filed by the Energy Efficiency Business Coalition on August 5, 2022, is granted.

9. The motion to intervene filed by Energy Outreach Colorado on August 5, 2022, is granted.

10. The motion to intervene filed by Iconergy LTD on August 8, 2022, is granted.

11. The motion to intervene filed by the Southwest Energy Efficiency Project on August 5, 2022, is granted.

12. The motion to intervene filed by Western Resource Advocates on August 8, 2022, is granted.

13. Iconergy's motion for leave to reply to Public Service's objection to its intervention, filed on August 23, 2022, is granted.

14. The parties to this Proceeding are: Public Service, Trial Staff of the Commission, the Office of the Utility Consumer Advocate, Colorado Energy Office, City and County of Denver, City of Boulder, Climax Molybdenum Company, Colorado Energy Consumers Group, Energy Efficiency Business Coalition, Energy Outreach Colorado, Iconergy LTD, Southwest Energy Efficiency Project, and Western Resource Advocates.

15. UCA's Motion to Order Supplemental Direct Testimony is denied, consistent with the discussion above.

16. Public Service Company of Colorado shall file Supplemental Direct Testimony in this Proceeding, consistent with the discussion above.

17. Public Service shall confer with the parties to develop a proposed procedural schedule, consistent with the discussion above. Public Service shall file the proposed procedural schedule no later than September 9, 2022.

18. A remote prehearing conference is scheduled as follows:

DATE: September 16, 2022

TIME: 2:00 p.m. to 4:00 p.m.

PLACE: Zoom Meeting

<https://us06web.zoom.us/j/82447340566?pwd=Sy9FRW5HMdIrVDg4NGk5d09BSW1PUT09>

19. The Commission establishes a 10-day response time, from the effective date of this Decision, for parties to file any responses to Public Service's motions requesting the Commission: (1) allow the 2021-22 DSM Plan to remain in place until the 2023 DSM & BE Plan becomes effective; and (2) grant a variance from Rules 4753(k) and 4756(b) of the Commission's Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* 723-4, as well as any additional waivers or variances necessary to implement the 2023 DSM & BE Plan.

20. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 31 and September 7, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners