

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

PROCEEDING NO. 22AL-0270E

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IN THE MATTER OF ADVICE LETTER NO. 1889 – ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8-ELECTRIC FOR APPROVAL TO RECOVER COSTS ASSOCIATED WITH JOINING THE WESTERN ENERGY IMBALANCE SERVICES MARKET OPERATED BY THE SOUTHWEST POWER POOL AND TO CREDIT SPP WEIS MARKET SALE REVENUES TO CUSTOMERS THROUGH THE ELECTRIC COMMODITY ADJUSTMENT TARIFF, TO BECOME EFFECTIVE JULY 15, 2022.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
SCHEDULING HEARING AND ESTABLISHING  
DEADLINES AND PROCEDURES**

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Mailed Date: September 8, 2022

**I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY**

**A. Summary**

1. This Decision approves the proposed procedural schedule that Public Service Company of Colorado (Public Service or the Company) filed on behalf of the parties, with minor modifications; schedules a fully remote evidentiary hearing; and establishes deadlines and procedures relating to the evidentiary hearing.

**B. Procedural History<sup>1</sup>**

2. On June 14, 2022, Public Service filed the above-captioned Advice Letter.

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<sup>1</sup> Only the procedural history necessary to understand this Decision is included.

3. On August 17, 2022, the Commission referred this proceeding to an administrative law judge (ALJ) for disposition by minute entry.

4. In addition to Public Service, the following entities are parties to this Proceeding: the Office of the Utility Consumer Advocate's (UCA), Trial Staff of the Colorado Public Utilities Commission Staff's (Staff), the Colorado Energy Office's (CEO); the Colorado Energy Consumers (CEC), Western Resource Advocates (WRA), and Climax Molybdenum Company (Climax).<sup>2</sup>

5. Black Hills Colorado Electric, LLC (Black Hills) is an amicus curiae in this Proceeding.<sup>3</sup>

6. On August 29, 2022, the ALJ ordered the parties to confer on a procedural schedule, and Public Service to submit a proposed consensus procedural schedule on or by September 6, 2022.<sup>4</sup> As a part of that order, the ALJ identified numerous items for the parties' conferral, and informed the parties that an evidentiary hearing must be complete by December 2, 2022 to allow sufficient time for a recommended and final Commission decision.<sup>5</sup>

7. On September 6, 2022, Public Service filed its Conferral Report with Attachment A thereto proposing a procedural schedule and addressing the items identified in Decision No. R22-0506-I.

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<sup>2</sup> Decision No. R22-0506-I at 8 (mailed August 29, 2022).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 9.

<sup>5</sup> *Id.* at 5-7.

## II. FINDINGS AND CONCLUSIONS

8. The Conferral Report states that the parties either agree with its proposals or take no position on them.<sup>6</sup> This renders the Conferral Report unopposed; as such, the ALJ finds good cause to waive the response time to it, and does so.<sup>7</sup>

9. The parties agree to the procedural schedule set forth in Attachment A to the Conferral Report, and agree that the Commission's discovery and confidentiality rules are sufficient.<sup>8</sup> The parties request that the evidentiary hearing be fully remote, with all parties, counsel, witnesses, and the ALJ appearing remotely via the web-hosted service, Zoom.<sup>9</sup> The parties ask for a three-day evidentiary hearing to be scheduled for November 29, 30, and December 1, 2022. Given the current hearing room availability, in order to commence each day of hearing at 9:00 a.m. (to allow for a full day of hearing), the hearing on November 30, 2022 has to be held in a different hearing room than the hearing on the other two days of hearing. Public Service, Climax, and CEC all prefer to start the November 30, 2022 hearing at 9:00 a.m.; the remaining parties do not take a position in this.<sup>10</sup>

10. The ALJ finds that the Conferral Report complies with the requirements of Decision No. R22-05069-I and, except for one proposed deadline, that the parties' proposed procedural schedule is reasonable and appropriate. As to the referenced proposed deadline, the ALJ is concerned that the proposed deadline to file final exhibits (November 8, 2022) fails to recognize that the parties also propose to file nontestimonial exhibits after that date, on November 15, 2022.

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<sup>6</sup> Conferral Report at 1-2.

<sup>7</sup> See Rule 1401(b), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.*

The parties also propose that November 8, 2022 be the deadline to file corrected or amended exhibits (also before the proposed November 15, 2022 deadline to file all remaining exhibits).

11. Given the above inconsistencies, the ALJ clarifies and slightly modifies these proposed deadlines. First, the ALJ approves the proposed November 8, 2022 deadline to file corrected or amended exhibits, but clarifies that this is the deadline to amend or correct testimonial exhibits and attachments. This clarification recognizes that parties most often correct testimonial exhibits. Second, the ALJ approves the proposed November 15, 2022 deadline to file non-testimonial exhibits, but rejects the parties' proposal to establish November 8, 2022 as the deadline to file final exhibits. A deadline to final exhibits is often established to ensure that the Commission's staff has enough time to generate and circulate a hyperlinked spreadsheet that will be used during the hearing to display and offer electronic pre-filed exhibits.<sup>11</sup> Thus, to avoid confusion, the ALJ will establish November 15, 2022 as the deadline to file exhibits that will be included in the hyperlinked spreadsheet, (rather than a deadline to file final exhibits).<sup>12</sup> This does not modify the November 8, 2022 deadline to file corrected or amended testimonial exhibits and attachments.

12. With these minor modifications and clarifications, the ALJ approves the parties' proposed procedural schedule. The ALJ also approves the parties' request to hold the evidentiary hearing fully remotely.

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<sup>11</sup> See Attachment B at 1.

<sup>12</sup> In the standard Attachment B used for these proceedings, the deadline to file final exhibits is also referred to as the deadline to file corrected exhibits. Given the parties' proposed schedule, the ALJ adjusts Attachment B to account for the above issues and to avoid confusion.

13. In addition, the ALJ will also establish a deadline for Black Hills to submit an amicus brief, should it wish for the ALJ to consider its position prior to issuing a recommended decision. This deadline is permissive, not mandatory.

14. To allow the parties to take advantage of as much hearing time as possible, the ALJ will schedule each day of hearing to begin at 9:00 a.m. This means that based on the current hearing room availability, the November 30, 2022 hearing will be held in a different hearing room than the other hearing dates. It is possible that hearing room availability may change such that all three days of hearing may be held in the same hearing room. As such, the parties should consult the Commission's public calendar prior to the hearing to confirm the hearing room for each day of hearing. And, as noted below, the parties will be provided the information needed to join the hearing via Zoom; that information will also indicate in which hearing room each day of hearing is scheduled to occur. The parties should pay special attention to the Zoom information, as it may not be same for each day of hearing if the hearing is held in different hearing rooms.

15. Attachment A hereto includes important technical information and requirements to facilitate holding the hearing remotely. 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.<sup>13</sup> This will help minimize background noise and avoid issues that may arise should the ALJ need to hold confidential or highly confidential hearing session.

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<sup>13</sup> 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."

16. Attachment B includes information and requirements to facilitate electronic evidentiary presentations at the hearing. Many requirements in Attachment B 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 failing to comply with these formatting, marking, and filing requirements. This has 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.

17. The parties must take extra care in reviewing Attachment B alongside their exhibits *before filing them* to ensure that they comply with each and every requirement in Attachment B. It is the parties' responsibility, not Commission support staff's, to ensure that exhibits are correctly formatted, marked, and filed.

18. To minimize the potential that the video-conference 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.<sup>14</sup> Counsel and the parties are responsible for ensuring that their witnesses receive the Zoom information needed to join the hearing.

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<sup>14</sup> 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.

19. *The parties are on notice* that consistent with Commission practice, friendly cross-examination will not be permitted.

**III. ORDER**

**A. It Is Ordered That:**

1. Consistent with the above discussion, the response time to Public Service Company of Colorado's (Public Service) Conferral Report is waived, and the proposed procedural schedule therein is approved with the clarifications and modifications discussed.

2. A remote evidentiary hearing on the above-captioned Advice Letter is scheduled as follows:

DATES: November 29, 30, and December 1, 2022

TIMES: 9:00 a.m. each day

PLACE: Join by video-conference using Zoom.

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

4. All parties must comply with the requirements in Attachments A and B to this Decision, which are incorporated into this Decision.

5. Non-participants in the evidentiary 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>.

6. **Video-Conference Participation.** The parties and witnesses are required to participate in the evidentiary hearing by video-conference using Zoom. The parties must ensure

that they and their witnesses are ready and able to participate in the evidentiary hearing by video-conference, including presenting evidence electronically during the hearing using Zoom.

7. **Answer Testimony Deadline.** Interveners' answer testimony must be filed and served by October 10, 2022.

8. **Rebuttal and Cross-Answer Testimony Deadline.** Public Service's rebuttal testimony, and Interveners' cross-answer testimony must be filed and served by November 7, 2022.

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

a. On or by November 8, 2022, 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). Such filings must comply with the specific requirements in Attachment B.

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.

10. **Deadline for Non-Testimonial Hearing Exhibits.** By November 15, 2022, 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. Any party may use any other party's hearing exhibits during the course of the hearing and should not file them separately.

11. **Deadline to File Exhibits to Be Included in Hyperlinked Spreadsheet.** Any exhibits filed after November 15, 2022 will not be included in the hyperlinked spreadsheet that will be used to electronically present evidence during the hearing (as discussed in Attachment B to this Decision and above).

12. **Deadlines for Prehearing Motions and Responses Thereto.** The parties must file and serve any prehearing motions by November 15, 2022; responses to prehearing motions must be filed by November 22, 2022.

13. **Deadline for Stipulations and Settlement Agreements.** The parties must file and serve any stipulations and settlement agreements by November 16, 2022.

14. **Deadline for Testimony in Support of or in Response to Settlement Agreements.** The parties must file and serve testimony in support of or in response to any settlement agreements by November 22, 2022.

15. **Deadline for Hearing Exhibit and Witness Lists, and Joint Witness Examination Matrix.** By November 23, 2022, 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 number, the full title of each hearing exhibit, and include a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing. Describing an exhibit solely by identifying the exhibit number **does not meet** this requirement (*e.g.*, describing it as "Hearing

Exhibit 100” without information as to substantive nature or content of the exhibit). Also by November 23, 2022, 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.

16. **Deadline for Statements of Position and Amicus Brief.** In lieu of a verbal closing argument, the parties may submit written statements of position. Any party wishing to do so must file their statement of position by December 16, 2022. In addition, should Black Hills Colorado Electric, LLC wish to submit an amicus brief for consideration prior to a recommended decision being issued, it must file and serve its brief by December 16, 2022.

17. **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 Attachment B, using hearing exhibits within their assigned exhibit number blocks. The following are the assigned hearing exhibit numbers for all parties in this proceeding:

<b>Party</b>	<b>Assigned Hearing Exhibit Numbers</b>
Public Service	100 to 299
The Office of the Utility Consumer Advocate	300 to 399
The Colorado Energy Consumers	400 to 499
Trial Staff of the Colorado Public Utilities Commission	500 to 599
The Colorado Energy Office	600 to 699
Western Resource Advocates	700 to 799
Climax Molybdenum Company	800 to 899

18. Any party requiring more exhibit numbers than assigned may use the same numerical sequence of exhibit numbers assigned to them, but in the 1000 range (*e.g.*, Public Service would use hearing exhibit numbers 1100-1299; the Office of the Utility Consumer Advocate would use hearing exhibit numbers 1300-1399, etc.). Hearing exhibit 900 is reserved for the hyperlinked spreadsheet that will be used during the hearing to present evidence.

19. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MELODY MIRBABA

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director