

Decision No. R22-0731-I

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

PROCEEDING NO. 22F-0365E

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SUNSHARE, LLC,

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
G. HARRIS ADAMS  
GRANTING MOTION IN PART AND  
RESCHEDULING HEARING**

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Mailed Date: November 17, 2022

**I. STATEMENT**

1. On November 7, 2022, Public Service Company of Colorado (Public Service or the Company) filed its Request for Shortened Response Time to the Motion of Public Service Company of Colorado to Approve Its Proposed Procedural Schedule and Vacate Current Hearing Date of November 30, 2022.

2. By the Commission's Notice of Hearing, issued August 25, 2022, an evidentiary hearing is currently scheduled in this Proceeding for November 30, 2022.

3. On September 21, 2022, Trial Staff of the Public Utilities Commission timely intervened of right.

4. By Decision No. R22-0711-I, issued November 10, 2022, the Office of the Utility Consumer Advocate (UCA) was granted Amicus Curiae status.

5. By Decision No. R22-0709-I, issued November 9, 2022, response time to the Motion of Public Service Company of Colorado to Approve Its Proposed Procedural Schedule and Vacate Current Hearing Date of November 30, 2022, was shorted to November 14, 2022.

6. On November 10, 2022, the Response of SunShare, LLC (SunShare) to Motion to Modify Procedural Schedule and Submission of Complainant's Proposed Procedural Schedule was filed.

7. Public Service seeks a more meaningful opportunity for the Company and Staff to provide written testimony and legal arguments than provided for in the current procedural schedule. Further, Public Service contends a long and complicated history warrants an opportunity to conduct discovery and provide Answer Testimony and Cross-Answer Testimony in response.

8. Public Service proposes a modified procedural schedule and discovery procedures leading to a hearing commencing on February 29, 2022. Finally, to accommodate the proposed schedule, it is requested that the currently scheduled hearing be vacated.

9. In its response, SunShare does not oppose the entirety of the requested relief. Acknowledging Public Service's concerns, SunShare proposes a procedural schedule that provides an increased opportunity to conduct discovery and a separate opportunity to file answer testimony. To accommodate the proposed procedural schedule, it is requested that the currently scheduled hearing be vacated. If SunShare's proposal is not adopted, SunShare requests the hearing proceed as scheduled.

10. Staff filed no response to Public Service's motion. Based upon conferral, Staff supports Public Service's motion and opposes SunShare's proposal.

11. SunShare generally argues that the parties' conduct does not demonstrate urgency or need for discovery. As of the writing of the response, Staff nor Public Service had propounded any discovery requests. SunShare offered to host a discovery conference, but neither Public Service nor Staff accepted the proposal.

12. Based upon the arguments in Public Service' motion, SunShare advocates that written pre-filed answer testimony be accommodated, but that rebuttal or cross-answer testimony be presented live at hearing.

13. As to the timing of a decision, SunShare argues a final decision in May will result in construction of the 2020 CSG Projects during the winter of 2023/2024; Target Completion Dates past the date of project cancellation under the RFP; and requiring SunShare to either execute the Lincoln and Gerry Interconnection Agreements and incur significant cost and construction liability or withdraw from the queue.

14. SunShare unilaterally chose when to file its Complaint.

15. Rule 1302, 4 *Code of Colorado Regulations* (CCR) 723-1, uniformly applies to all formal complaints filed with the Commission without regard to complexity of factual or legal issues, or number of parties.

16. While efficient resolution of this matter is in the interests of all, it is especially important for the Commission to reach the best determination based upon the evidentiary record to be developed through the hearing process.

17. It is noteworthy that SunShare's proposed procedural schedule would not provide certainty as to a final Commission decision being issued by the end of April 2023. However, an attempt will be made to at least partially accommodate the concerns raised by all, as ordered below.

18. Public Service, supported by Staff, proposes:

<b>Event</b>	<b>Proposed Date</b>
Answer Testimony (Public Service and Staff)	December 20, 2022
Rebuttal (SunShare) & Cross-Answer Testimony (Public Service and Staff)	January 20, 2023
Stipulations & Settlement Agreements	February 14, 2023
Prehearing Motions	February 14, 2023
Cross-Examination Matrix	February 17, 2023
Corrections to Pre-Filed Testimony and Exhibits	February 14, 2023
Evidentiary Hearing	February 29-March 1, 2023
Statements of Position	March 20, 2023

19. SunShare, proposes:

Event	Proposed Date
Answer Testimony (Public Service and Staff)	December 1, 2022
Rebuttal (SunShare) & Cross-Answer Testimony (Public Service and Staff)	N/A
Stipulations & Settlement Agreements	December 9, 2022
Prehearing Motions	December 9, 2022
Cross-Examination Matrix	December 13, 2023
Corrections to Pre-Filed Testimony and Exhibits	December 13, 2022
Evidentiary Hearing	December 16, 2023
Statements of Position and Amicus Briefs	January 6, 2023

20. Based upon good cause shown in the arguments presented and the complexity of issues at hand, the hearing will be rescheduled to permit all parties additional time to prepare and present pre-filed written testimony in advance of the hearing.

**II. DISCOVERY**

21. In its motion, Public Service proposes that discovery rules and procedures contained in Rule 1405 govern discovery in this Proceeding, except that: (1) all discovery requests and responses will be served electronically and (2) all non-confidential discovery requests will be served upon each party to the proceeding and all non-confidential responses to an individual set of discovery will be served in a single, combined document to all parties. If

responses to an individual set of discovery are not served simultaneously, all available responses served on a given day shall be provide to all parties in a single, combined document. However, any discovery responses or requests containing confidential or highly confidential information will be served only on partis that have executed the appropriate nondisclosure agreement(s).

22. Public Service contends the proposed modifications will promote efficiency and cost savings, minimize duplicative discovery requests, maximize the time to respond to discovery.

23. Addressing discovery, SunShare proposes that discovery propounded to either SunShare's complaint or to Parties' answer testimony be responded to within five business days. SunShare will also schedule a technical conference with the parties to the case during the week of the November 14th regarding its cost model. SunShare has made an executable version of the model available to the Parties. SunShare otherwise agrees to the discovery procedures proposed in the Public Service Motion.

24. In light of the available time to conduct discovery within the adopted procedural schedule, Rule 1405 will not be modified at this time. To the extent necessary, parties will explicitly be permitted to specify the manner of service for confidential and non-confidential by agreement. If any agreement is reached, parties may request it be memorialized by decision if they so desire.

### **III. PROCEDURAL SCHEDULE AND HEARING DATES.**

25. A hybrid evidentiary hearing will be scheduled in this proceeding due to the COVID-19 pandemic. Public access to the Commission's offices and hearing rooms remains restricted currently.

26. The procedures developed for the hybrid evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room. For example, participating by videoconference allows parties and witnesses to view exhibits on the video-conference screen while the exhibits are being offered into evidence and witnesses testify about them.

27. The evidentiary hearing will be conducted via videoconference using Zoom. Attachment A to this Decision provides information about the Zoom platform and how to use Zoom to participate in the remote hearing. To minimize the potential that the remote 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 by email before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

28. Attachment B outlines procedures and requirements for marking and formatting exhibits aimed at facilitating efficient and smooth electronic evidence presentations at the remote hearing. It is extremely important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

29. In order to efficiently organize the numbering and preparation of exhibits for the hearing, all parties must use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- SunShare is assigned hearing exhibit numbers 100 to 299.
- Public Service is assigned hearing exhibit numbers 300 to 399; and
- Should need arise to identify hearing exhibits, UCA is assigned hearing exhibit numbers 400 to 499.

30. The ALJ notes that the Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

31. If the parties prefer a fully remote hearing, a motion to amend the hearing location and format may be filed.

32. The Parties are further advised and are on notice that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the parties to be familiar with and to comply with these rules. The rules are available on the Commission's website (<https://www.puc.colorado.gov>).

#### **IV. INFORMAL VIDEO-CONFERENCE PRACTICE SESSION.**

33. The ALJ will hold an informal practice video-conference session if requested by any party to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

34. The parties may contact a Commission Legal Assistant by email at [casey.federico@state.co.us](mailto:casey.federico@state.co.us) to schedule an informal practice video-conference session.

35. The parties will receive information and a link to participate in the informal practice session by email.

**V. ORDER**

**A. It Is Ordered That:**

1. The Motion of Public Service Company of Colorado to Approve Its Proposed Procedural Schedule and Vacate Current Hearing Date of November 30, 2022, filed by Public Service Company of Colorado (Public Service) on November 7, 2022, is granted in part.

2. The evidentiary hearing currently scheduled in this Proceeding for November 30, 2022, is vacated.

3. An evidentiary hearing in this proceeding is scheduled as follows:

Date: February 13 and 14, 2023

Time: 9:00 a.m. daily

Location: Commission Hearing Room  
1560 Broadway, Suite 250  
Denver, Colorado

METHOD: In-person and by videoconference using Zoom at the link to be provided to counsel and the parties via email prior to the hearing.

Optionally, any party may participate remotely by joining a video conference using Zoom at the link provided to the established parties in an e-mail prior to the scheduled hearing, as addressed above.<sup>1</sup>

4. The parties and witnesses may not distribute the Zoom link and access code to anyone not participating in the remote hearing.

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<sup>1</sup> Instructions for using the Zoom videoconferencing platform are provided in Attachment A to this Decision.

5. The following procedural schedule is adopted to govern this proceeding:

<b>Procedural Event</b>	<b>Due Date(s)</b>
Direct Testimony & Attachments	November 30, 2022
Answer Testimony & Attachments	December 21, 2022
Rebuttal & Cross-answer Testimony & Attachments	January 17, 2023
Corrections to Pre-filed Testimony & Attachments	February 6, 2023
Stipulations & Settlement Agreement	February 6, 2023

6. The parties may specify the manner of service among them relating to discovery (i.e., for confidential and non-confidential information), by agreement.

7. The parties shall be held to and shall comply with the requirements in this Decision. In addition to other requirements of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (e.g., Rule 1202 regarding pre-filed testimony), all pre-filed hearing exhibits shall be marked for identification and filed in accordance with this Decision, including Attachment B hereto.

8. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

G. HARRIS ADAMS

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director