

Decision No. R22-0735-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0270E

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.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
PARTIALLY GRANTING MOTION**

Mailed Date: November 17, 2022

I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision partially grants the relief sought in Public Service Company of Colorado’s (Public Service or the Company) Unopposed Motion to Approve Unanimous Comprehensive Settlement Agreement, to Amend Procedural Schedule, and Request for Waiver of Response Time and Expedited Decision (Motion) filed on November 15, 2022. Specifically, this Decision vacates or modifies the majority of the procedural schedule established by Decision No. R22-0529-I, and vacates the November 29 and 30, 2022 hearing dates while preserving the December 1, 2022 hearing date. This Decision does not approve Unanimous Comprehensive Settlement Agreement (Settlement Agreement), as it is premature to do so at this time.

B. Procedural History¹

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

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).²

5. With the parties' input, on September 8, 2022, the ALJ scheduled a three-day evidentiary hearing starting on November 29, 2022 and established numerous procedural deadlines to accommodate that hearing.³

6. On November 4, 2022, Public Service filed a Notice of Near Comprehensive Settlement in Principle, Unopposed Motion to Amend Procedural Schedule, and Request for Waiver of Response Time and Expedited Decision Motion (Notice and Motion). The Notice and Motion sought to vacate the November 7, 2022 deadline to file rebuttal and cross-answer testimony so that the parties could continue to focus on finalizing a comprehensive settlement agreement.

7. The ALJ granted the Notice and Motion on November 7, 2022.⁴

8. On November 15, 2022, Public Service filed the Motion along with Attachment A, the parties' fully executed Settlement Agreement.

¹ Only the procedural history necessary to understand this Decision is included.

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

³ Decision No. R22-0529-I (mailed September 8, 2022).

⁴ Decision No. R22-0694-I at 5 (mailed November 7, 2022).

II. FINDINGS AND CONCLUSIONS

9. Public Service states that the Motion is unopposed.⁵ For that reason, and because the deadlines the Motion seeks to vacate are closely approaching, the Company asks that the response time to the Motion be waived. Given that Motion is unopposed and the closely approaching deadlines, the ALJ finds good cause to waive the response time to the Motion and does so.⁶

10. In support of the Motion, the Company explains that all the parties entered into a comprehensive Settlement Agreement (Attachment A to the Motion), which they believe resolves all issues that were raised or could have been raised by the Settling Parties in this Proceeding.⁷ The parties intend to file testimony in support of the Settlement Agreement on November 22, 2022, consistent with the existing procedural schedule.⁸ The Motion suggests that the ALJ vacate the first two days of the evidentiary hearing (November 29 and 30, 2022), and reserve the third day of hearing, (December 1, 2022) for a hearing on the Settlement Agreement, should the ALJ decide one is necessary.⁹ The Motion also asks that should the ALJ determine that a hearing on the Settlement Agreement is necessary, that the deadline to file witness and exhibit lists and a joint witness examination matrix be extended from November 23, 2022 to November 28, 2022.¹⁰

11. In light of the Settlement Agreement, the ALJ finds that it is appropriate to vacate the deadlines to make the following filings: corrections to testimonial exhibits; non-testimonial

⁵ Motion at 2, 3 and 10.

⁶ See Rules 1308(c) and 1400(b) of the Commission's Rules of Practice and Procedure, *Code of Colorado Regulations* (CCR) 723-1.

⁷ Motion at 1-2.

⁸ Motion at 9. See Decision No. R22-0529-I at 9.

⁹ *Id.*

¹⁰ *Id.*

exhibits; exhibits to be included in the hyperlinked spreadsheet; and prehearing motions and responses thereto. As such, those deadlines, as established in Decision No. R22-0529-I are vacated. For the same reason, the ALJ will modify the November 23, 2022 deadline to file witness and exhibit lists and a joint witness examination matrix to 12:00 p.m. on November 28, 2022.¹¹ By that same date and time, the parties must either: make a filing identifying any pre-filed exhibits that they intend to offer into evidence by hearing exhibit number, content-descriptive title, filing party, file date, and file time (if more than one version was filed on the same date); or file any exhibits they intend to offer into evidence. Should the parties choose the former, they may identify the exhibits they intend to offer into evidence in their exhibit lists but must include the above information.

12. The following deadlines remain in place: the November 22, 2022 deadline to file testimony in support of the Settlement Agreement, and the December 16, 2022 deadline to file statements of position and for Black Hills Colorado Electric LLC to submit an amicus brief.

13. As to the evidentiary hearing, the ALJ agrees that three days of hearing is not necessary given the Settlement Agreement. But, since testimony in support of the Settlement Agreement has not yet been filed, it is premature to determine that no hearing at all is necessary. As such, the ALJ will vacate the November 29 and 30, 2022 hearing dates, and will preserve the December 1, 2022 hearing date, should a hearing on the Settlement Agreement be necessary.

¹¹ Filing by noon is necessary as there will be little time before the December 1, 2022 hearing to ensure that a hyperlinked exhibit spreadsheet can be prepared and circulated in advance of the December 1, 2022 hearing.

14. The ALJ will informally notify the parties sometime the week of November 28, 2022 if she has determined that a hearing on the Settlement Agreement is unnecessary and will issue a written decision vacating the December 1, 2022 hearing.¹²

15. The ALJ finds that it is premature to grant the Motion's request to approve the Settlement Agreement given that the parties have not yet filed testimony in support of the Settlement Agreement. As such, at this time, the Settlement Agreement is not approved.

III. ORDER

A. It Is Ordered That:

1. The response time to Public Service Company of Colorado's (Public Service) Unopposed Motion to Approve Unanimous Comprehensive Settlement Agreement, to Amend Procedural Schedule, and Request for Waiver of Response Time and Expedited Decision (Motion) filed on November 15, 2022 is waived. The Motion is partially granted, consistent with the above discussion.

2. The November 28 and 29, 2022 hearing dates are vacated, but the December 1, 2022 hearing date remains intact.

3. The deadlines to file corrections to testimonial exhibits; non-testimonial exhibits; exhibits to be included in the hyperlinked spreadsheet; and prehearing motions and responses established by Decision No. R22-0529-I are vacated.

4. By 12:00 p.m. on November 28, 2022, the parties must file witness and exhibit lists, and a joint witness examination matrix. By this same date and time, the parties must either: make a filing identifying any pre-filed exhibits that they intend to offer into evidence by hearing exhibit

¹² The ALJ is unable to make this determination any sooner because she will be out of the country when the parties file their testimony in support of the Settlement Agreement.

number, content-descriptive title, filing party, file date, and file time (if more than one version was filed on the same date); or file any exhibits they intend to offer into evidence at the December 1, 2022 hearing.

5. 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 "Doug Dean".

Doug Dean,
Director