

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0409E

IN THE MATTER OF APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR THE ACQUISITION OF, AND APPROVAL OF COST RECOVERY FOR, THE MANCHIEF GENERATION FACILITY AND VALMONT 7 & 8.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
ESTABLISHING ELECTRONIC
EXHIBIT HEARING PROCEDURES**

Mailed Date: October 15, 2019

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

1. On July 23, 2019, Public Service Company of Colorado (Public Service or the Company) filed with the Colorado Public Utilities Commission (Commission) a Verified Application (Application) for Certificates of Public Convenience and Necessity for the acquisition of: (1) the 301 MW Manchief generation facility; and (2) the 82 MW Valmont generation facility. In the Application, Public Service also sought approval of the Company's cost recovery proposal relating to these two facilities. Public Service also filed the supporting testimony and attachments of three witnesses. This filing commenced the above-styled proceeding.

2. The procedural history of the above captioned proceeding is recited in Decisions previously issued in this Proceeding and is repeated here as necessary to put this Decision into context.

3. During the Commission's weekly meeting held on September 4, 2019, the Application was deemed complete for purposes of § 40-6-109.5, C.R.S., and was referred to an Administrative Law Judge (ALJ) for disposition. This Proceeding was subsequently assigned to the undersigned ALJ.

4. On October 7, 2019, Public Service filed a Consensus Procedural Schedule, in accordance with Decision No. R19-0801-I (mailed on September 27, 2019), *inter alia* stating that all Parties agreed that presentation of evidence at the hearing should be done through electronic exhibits to the fullest extent possible, with the exception of exhibits to be used for impeachment or rebuttal.

5. By Decision No. R19-0827-I (mailed on October 8, 2019), the ALJ *inter alia* adopted a procedural schedule with various filing dates and set an evidentiary hearing for January 22 and 23, 2020. That Decision indicated that the presentation of electronic exhibits at the hearing would be addressed in a separate Interim Decision.

B. Presentation of Exhibits Electronically Submitted During a Hearing

6. The presentation of evidence at the hearing shall be done through electronic exhibits to the fullest extent possible, with the exception of exhibits used for impeachment or rebuttal, or any other exhibits admitted in paper form during the hearing.¹ If a pre-filed hearing exhibit marked for identification is admitted into evidence, it is anticipated that the electronic copy in the Commission's file will be admitted by administrative notice, in lieu of receiving the identical paper copy (*e.g.*, the fact administratively noticed is that the copy on file is the content of the otherwise-admissible hearing exhibit).

7. To facilitate the presentation of exhibits electronically during the hearing, the Commission will provide a spreadsheet identifying each hearing exhibit as it exists in the administrative record. The spreadsheet will include hyperlinks to the filings in the administrative record. The spreadsheet will be made available to the parties prior to hearing and marked as a hearing exhibit. Commission Staff will display pre-filed electronic filings during the hearing.²

8. Final versions of all hearing exhibits must be filed **on or before January 17, 2020**, unless otherwise ordered, so that the spreadsheet may be timely prepared and distributed to the parties prior to the hearing. Hyperlinks will not be included for confidential or highly confidential information.

¹ In this Decision, the term "hearing" refers to either an evidentiary hearing or a settlement hearing.

² Exhibits will be displayed on large monitors in the hearing room. Should the parties have technical questions relating to the electronic presentation of exhibits, they may contact Ms. Christie Nicks at (303) 894-2010.

9. After this deadline, any exhibit that is intended to be offered into evidence: (1) may be filed for the limited purpose of disclosure and shall not be marked for identification; (2) shall be marked for identification during hearing and offered in paper form, and in such a circumstance, the party offering the document for admission is responsible for ensuring that a sufficient number of paper copies is available pursuant to Rule 1501(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1; and (3) will neither be included in the spreadsheet of electronic exhibits nor admitted in electronic form by administrative notice pursuant to this Decision.

10. Unless otherwise ordered, any party offering admission of any pre-filed exhibit during hearing (*e.g.*, for impeachment) shall ensure that one paper copy of each such pre-filed hearing exhibit is available for use by the witnesses during hearing. The paper copy made available at hearing shall be marked for identification identically to the electronic version in the administrative record. The sponsoring party shall assure that the paper copy of the exhibit is identical to the electronic version.

C. Assignment of Hearing Exhibit Number Blocks

11. Hearing exhibits shall be marked numerically and sequentially for identification by the filing parties within their respective blocks of numbers. In order to organize the numbering and preparation of exhibits for hearing efficiently, all parties shall use a unified numbering system for all hearing exhibits. Parties should not duplicate hearing exhibits or attachments previously filed by another party, because any pre-filed hearing exhibit filed may be offered by any party.

12. Public Service is assigned hearing exhibit numbers from 100 to 299. Each person requesting intervention is assigned a subsequent block of 100 hearing exhibit numbers. Persons

requesting intervention receive blocks starting with 200, in the order that requests or notices of intervention were filed, as reflected in the Commission’s E-Filing System. The hearing numbers shall be distributed as follows:

100-299	Public Service
300-399	Trial Staff of the Commission
400-499	Office of Consumer Counsel
500-599	Southwest Generation Operating Company, LLC
600-699	Western Resource Advocates

13. All exhibits first presented at hearing will be marked for identification during hearing using the next available sequential block of numbers, here 700-799. This includes any document used for impeachment or rebuttal that has not been pre-filed as a hearing exhibit. If the exhibit is a document, the party offering it for admission shall ensure that a sufficient number of paper copies is available pursuant to Commission Rule 1501(b).

D. Identification and Filing Requirements for Hearing Exhibits

14. In addition to other requirements of the Commission’s Rules of Practice and Procedure, 4 CCR 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 Interim Decision.³

15. Each type of a witness’s testimony, including any attachments, (*e.g.*, direct, answer, rebuttal, cross-answer, and supplemental) shall be marked as one hearing exhibit number. Even if comprised of multiple electronic documents, the testimony and attachments will be one hearing exhibit. The title of each pre-filed hearing exhibit shall match the title entered in the Commission’s E-Filings System and start with “Hearing Exhibit XXX.” Hearing exhibits

³ In order to minimize the size and allow electronic text searches of the PDF files, versions filed in PDF format should be generated from the native executable electronic file format when possible.

shall be marked numerically and sequentially for identification by the filing parties within their respective exhibit number blocks. At the hearing, any party may sponsor an exhibit that was pre-filed by another party.

16. The title of all pre-filed written testimony (*i.e.*, primary document) should include the type of testimony and the name of the witness. For example, if Hearing Exhibit 100 is the direct testimony of witness John J. Doe, the following title should be used: “Hearing Exhibit 100, Direct Testimony of John J. Doe.”

17. Anything accompanying pre-filed written testimony within a hearing exhibit (*e.g.*, traditionally exhibits, appendices, attachments, or attachments to filing) shall be referred to as an “Attachment” to the testimony in the hearing exhibit and identified by the hearing exhibit number reference, the witness’s initials, and a number sequence. Again, attachments will be part of the hearing exhibit identifying each type of testimony. As an example, if the party assigned block 300 files answer testimony of Albert B. Cooke, that includes a table as Attachment ABC-1, then the title of the table will be “Hearing Exhibit 300, Attachment ABC-1.” The attachment should **not** be referred to as Exhibit ABC-1 or Appendix A.

18. Any party wishing to admit any document used for impeachment or rebuttal may do so by presenting a paper copy of the document at an appropriate time during the hearing.⁴ In such a circumstance, the party offering the document into evidence is responsible for ensuring that there are an appropriate number of paper copies available at the time of offering the document. In addition to an original, copies for the other parties, and a copy for the witness, the parties should bring a copy for the advisor(s) and the presiding officer.

⁴ To be clear, the parties are not required to pre-file documents to be used solely for impeachment or rebuttal.

E. Formatting of Hearing Exhibits

19. There shall be only one page number shown on each page of all testimony. The first page of **all** page-numbered hearing exhibits shall be page 1, with each additional page numbered in succession (to best match page number references with electronic file page references). For example, the cover page shall be page 1, and all following pages shall be numbered sequentially, including for example executive summaries, tables of contents, and lists of attachments.

20. Page numbers should be included in the header of each page-numbered hearing exhibit. The top line of the header shall include the title of the document (*e.g.*, Hearing Exhibit 400, Answer Testimony of Albert B. Cooke or Hearing Exhibit 400, Attachment ABC-1).

21. A person may modify formatting options in revisions to filed documents in order to minimize the resulting impact to page and line references (*e.g.*, widening a paragraph margin to insert a word).

22. Titles entered into the Commission's E-Filings System should be in title format (*i.e.*, not all capitals).

F. Filing of Executable Attachments to Hearing Exhibits

23. Any attachments to hearing exhibits created from a spreadsheet and relying on foundation not viewable in the pre-filed version (*i.e.*, PDF version), shall also be filed in the native executable electronic file format (*e.g.*, .xlsx, .ods, .gsheet).⁵

⁵ Filing of the executable version may result in the programmatic creation of a corresponding PDF version. Any such PDF version titled as "Executable" (consistent with the naming convention set forth above) will be disregarded for all purposes, including reference and display during hearing.

24. The title of the executable version filed shall mirror the title identifying the pre-filed version and include the word “Executable” after the hearing exhibit number. For example: Hrg. Ex. 300, Executable Attachment ABC-1C.

25. The executable version is not required to be marked for identification as a hearing exhibit and paginated in the same manner as the PDF version.

26. All executable versions shall have the various cell formulae or links left intact. Cell formulae shall not be converted to values.

27. The executable version shall be filed on the same day as the pre-filed PDF version.

G. Modifying, Amending, or Correcting a Previously Filed Hearing Exhibit on or Before Deadline for Corrections

28. Should a party need to modify, amend, or correct a previously identified hearing exhibit **on or before January 17, 2020**, the ordered deadline for corrections to pre-filed testimony and attachments, the following procedures shall be followed.

29. If the native executable electronic file format is **not** a spreadsheet, a complete revision including all changes in redline/strikeout format shall be filed.⁶ No modification, amendment, or correction shall be made to a filed hearing exhibit without indicating a new revision number, as described below. The same title shall be used for the title as the original, except that a revision number reference should be added to give notice of the change.

30. Illustratively, if Hearing Exhibit 100, Direct Testimony of John J. Doe, is changed, it would be filed as Hearing Exhibit 100, Direct Testimony of John J. Doe, Rev. 1,

⁶ Filing a “clean” version is not necessary and is discouraged.

containing redlined modifications to the original version.⁷ If an additional revision is filed later, it would be filed as Hearing Exhibit 100, Direct Testimony of John J. Doe, Rev. 2, and would contain all redlined modifications as compared to the original version (*i.e.*, not only as compared to Rev. 1). For Rev. 2 and all subsequent revisions, the filing shall also include a notice identifying changes in each revision from the most recent previous revision. Further, the title of any revision should not contain the word “corrected” even if the revision corrects the prior filing.

31. If the native executable electronic file format is a spreadsheet (*e.g.*, .xlsx, .uos, .gsheet), a complete revision including all changes shall be filed. The changes do *not* need to be in redline/strikeout format. No modification, amendment, or correction shall be made to a filed hearing exhibit without indicating a new revision number (*e.g.*, Rev. 1). The same title shall be used for the title as the original, except that a revision number reference should be added to give notice of the change. The revision pages shall also include an additional notice attachment (*i.e.*, as a secondary document if electronically filed) identifying changes in each revision from the most recent previous revision. Additionally, a complete revision of the executable spreadsheet, including all changes, shall be filed in accordance with Section F above.

32. The most recent revision of a hearing exhibit shall be the version utilized during the hearing. References in testimony to obsolete versions of other testimonies will be construed to be amended to refer to the latest filed version of such testimony, unless otherwise specified. Although corresponding page and line references may reasonably be affected by such construction, corrected references will not be necessary (*i.e.*, no need to amend page and line references), so long as the reference remains in reasonable proximity to the referenced material. Thus, a reference in answer testimony to page 10, line 5, of someone else’s direct testimony need

⁷ “Rev.” stands for revision.

not be revised when a revision is filed to such direct testimony so long as page 10, line 5, is in reasonable proximity to the referenced material.

H. Modifying, Amending, or Correcting a Previously Filed Hearing Exhibit After Deadline for Corrections

33. Should a party need to modify, amend, or correct a previously identified hearing exhibit **after January 17, 2020**, the ordered deadline for corrections to pre-filed testimony and attachments, the following procedures shall be followed.

34. If the native executable electronic file format is **not** a spreadsheet, all changes should be reflected on replacement pages only in redline/strikeout format that will be presented in paper form during hearing.⁸ The replacement pages shall collectively be marked for identification at the time of hearing as a separate hearing exhibit. The replacement pages shall also include an additional notice attachment (*i.e.*, as a secondary document if electronically filed) identifying changes in each revision from the most recent previous revision.

35. If the native executable electronic file format **is** a spreadsheet (*e.g.*, .xlsx, .uos, .gsheet), all changes should be reflected on replacement pages only that will be presented in paper form during hearing. The changes do **not** need to be in redline/strikeout format. The revision pages shall also include an additional notice attachment (*i.e.*, as a secondary document if electronically filed) identifying changes in each revision from the most recent previous revision. Additionally, a complete revision of the executable spreadsheet, including all changes, shall be filed in accordance with Section F above.

36. These procedures for allowing parties to revise or to correct a previously identified hearing exhibit, after the deadline for filing Corrected Testimony and Attachments or

⁸ Filing a “clean” version is not necessary and is discouraged.

during hearing, are *not* intended to be used by the parties or their witnesses, in the guise of corrections, to supplement or to make material or substantive changes to the witness's position on any issue, when compared to the original pre-filed testimony and attachments. A party who needs to make material or substantive changes to a witness's position on an issue, as stated in the pre-filed testimony and attachments, after the deadline for filing Corrected Testimony and Attachments, will only be allowed to make such revisions after written notice to the ALJ and the other parties (*e.g.*, by filing a motion), at least three business days prior to the first day of hearing and only after the ALJ finds that the party has shown good cause to make such changes.

37. If the changes are permitted, and assuming the original filing is otherwise admissible, both hearing exhibits would be admitted into evidence during hearing with the latter replacement pages superseding and prevailing to the extent they conflict with the most recent revision.

38. References to superseded portions of a hearing exhibit will be construed to be amended to refer to the replacement pages, unless otherwise specified. Although corresponding page and line references may reasonably be affected by such construction, corrected references will not be necessary (*e.g.*, no need to amend) so long as the reference remains in reasonable proximity to the referenced material. Thus, a reference in answer testimony to page 10, line 5, of someone else's direct testimony need not be revised when a replacement page 10 is filed so long as page 10, line 5, is in reasonable proximity to the referenced material.

I. Procedures Regarding Confidentiality

39. Any pre-filed hearing exhibit (including attachments) filed in accordance with the Standards of Conduct in the Commission's Rules of Practice and Procedure containing confidential information shall be pre-marked for identification by the same hearing exhibit

number within the assigned block identifying the portion in the public record and shall be designated with a “C” following the number of the hearing exhibit or attachment.

40. For example, a witness’s pre-filed written testimony might be identified as Hearing Exhibit 100, Direct Testimony of John J. Doe. If portions of the testimony in Hearing Exhibit 100, Direct Testimony of John J. Doe, are claimed to be confidential, those portions would be filed in accordance with the Standards of Conduct and identified as Hearing Exhibit 100C, Direct Testimony of John J. Doe. Hearing Exhibit 100, Direct Testimony of John J. Doe, would remain in the public record (redacted to exclude confidential material).

41. Further, if portions of Hearing Exhibit 100, Direct Testimony of John J. Doe, Attachment JJD-1, are claimed to be confidential, those portions would be filed in accordance with the Standards of Conduct and identified as Hearing Exhibit 100, Attachment JJD-1C. Hearing Exhibit 100, Attachment JJD-1, would remain in the public record (redacted to exclude confidential material). Comparably, should any highly confidential protections be afforded, the hearing exhibit number would be designated with an “HC” following the hearing exhibit number.

42. A deadline will be established, as ordered below, for any objections to the admissibility of any pre-filed hearing exhibits marked for identification (*e.g.*, authenticity).

II. ORDER

A. It Is Ordered That:

1. 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.⁹

2. Any attachments to hearing exhibits created from a spreadsheet and relying on foundation not viewable in the pre-filed version (*i.e.*, PDF version), shall also be filed in the native executable electronic file format (*e.g.*, .xlsx, .uos, .gsheet) in accordance with this Decision.

3. To comply with this Decision, Public Service Company of Colorado shall file pre-marked hearing exhibits that it intends to offer into evidence (*e.g.*, those previously filed) for identification in accordance with ordered procedures and the discussion above within 14 days of the date of this Decision, or no later than October 29, 2019. For purposes of this Decision, any such filings shall be treated as the original filing of hearing exhibits.¹⁰

4. All corrections to any pre-filed hearing exhibits marked for identification shall be filed on or before January 17, 2020, the deadline for filing “Corrections to Pre-filed Testimony and Attachments” established in the adopted procedural schedule.

⁹ If the Commission’s E-Filings System does not accept the electronic format of any pre-filed hearing exhibit, an electronic copy must be filed with the Commission on a CD, DVD, or portable drive. If any such hearing exhibit is created from a spreadsheet, the native executable electronic file format must be filed simultaneously on the same CD, DVD, or portable drive.

¹⁰ Compliance with this Decision may result in a change to pagination of prior versions of hearing exhibits. References in discovery requests and responses to prior versions of hearing exhibits will be construed to be amended to refer to the latest filed version of such testimony, unless otherwise specified. Although corresponding page and line references may reasonably be affected by such construction, corrected references will not be necessary (*i.e.*, no need to amend) so long as the reference remains in reasonable proximity to the referenced material.

5. Any objections to the admissibility of, and any motions to strike, any pre-filed hearing exhibits marked for identification (*e.g.*, authenticity) shall be filed by January 6, 2020. Any responses to such motions shall be filed within ten days after service, or no later than January 15, 2020.¹¹

6. At the hearing, all parties shall provide one paper copy of each pre-marked hearing exhibit they intend to offer for use by the witnesses during examination.

7. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director

¹¹ Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the Administrative Law Judge (ALJ) has shortened this deadline for filing responses to any motions to strike, in order to allow the ALJ to review the motions to strike and responses, and perhaps to rule, prior to the commencement of the hearing.