

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
GRANTING UNOPPOSED MOTION,
WAIVING RESPONSE TIME,
SUSPENDING CERTAIN PROCEDURAL DATES,
AND SCHEDULING SETTLEMENT HEARING**

Mailed Date: December 16, 2019

I. STATEMENT

This Interim Decision grants the Unopposed Motion to Suspend Procedural Schedule and Request for Waiver of Response Time (Unopposed Motion) filed by Public Service Company of Colorado (Public Service) on December 16, 2019; waives response time to the Unopposed Motion; suspends certain deadlines in the adopted procedural schedule; modifies the date for filing written settlement agreements; vacates the evidentiary hearing on the merits set for January 22, 2020; and schedules a hearing on the written Settlement Agreement for January 23, 2020.

A. Procedural History.

On July 23, 2019, Public Service filed with the Colorado Public Utilities Commission (Commission) a Verified Application (Application) for Certificates of Public Convenience and Necessity (CPCNs) for the acquisition of: (1) the 301 MW Manchief generation facility (Manchief); and (2) the 82 MW Valmont generation facility (Valmont). Public Service also seeks approval of the Company's cost recovery proposal relating to these two facilities. Along

with the Application, Public Service filed the supporting testimony and attachments of three witnesses. This filing commenced the above-styled proceeding.

In Phase II of Public Service's 2016 Electric Resource Plan (ERP), the Commission approved the Company's Preferred Colorado Energy Plan Portfolio, which included *inter alia* 383 MW of existing gas generation assets. The Manchief and Valmont facilities, the acquisition of which Public Service seeks approval in this Application, were the 383 MW of existing gas generation assets approved in Phase II of the ERP.¹

During the Commission's weekly meeting 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. The undersigned ALJ was subsequently assigned to preside over this Proceeding.

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

The Parties to this Proceeding are Public Service, the Colorado Office of Consumer Counsel (OCC), Trial Staff of the Colorado Public Utilities Commission (Staff), Southwest Generation Operating Company, LLC (SW Generation), and Western Resource Advocates (WRA).²

¹ Application at pages 1-2. *See* Decision No. C18-0761 (mailed September 10, 2018), ¶¶ 103 – 108 and 119 – 121 at pages 31 – 33 and 36, in Proceeding No. 16A-0396E (Phase II ERP Decision). The Commission required Public Service to file a CPCN application to acquire the natural gas-fired resources and to address cost recovery requests for those resources in the required CPCN application filing. *Id.*, ¶¶ 119 – 121 at page 36 and Ordering Paragraph No. 4 at page 42.

² *See* Decision No. R19-0801-I (mailed on September 27, 2019).

After Public Service filed a consensus Procedural Schedule on October 7, 2019, Decision No. R19-0827-I (mailed on October 8, 2019) adopted the negotiated procedural schedule and hearing dates, as follows:

Procedural Activity	Dates
Answer Testimony and Attachments	December 6, 2019
Rebuttal and Cross-answer Testimony and Attachments	December 23, 2019
Stipulations and/or Settlement Agreements	January 15, 2020
Corrections to Pre-filed Testimony and Attachments	January 17, 2020
Evidentiary Hearing	January 22-23, 2020
Statements of Position (Filed Simultaneously)	February 6, 2020
Statutory Deadline for Commission Decision	May 11, 2020

Decision No. R19-0958-I (mailed on November 27, 2019) granted Public Service's unopposed Motion to Alter Procedural Schedule and Request for Waiver of Response Time, extended the dates for filing Answer Testimony (and Attachments) and Rebuttal and Cross-answer Testimony (and Attachments) to December 16, 2019 and January 7, 2020, respectively.

On December 16, 2019, Public Service filed a Notice of Settlement in Principle (Notice) and the Unopposed Motion, which states that Public Service and the other Parties have been engaged in settlement negotiations and have reached a global, comprehensive settlement in this Proceeding. A written Settlement Agreement is currently being prepared. Public Service requests the entry of an Order (1) suspending the current procedural schedule and (2) requiring Public Service and all parties to file the finalized Settlement Agreement and supporting testimony by January 8, 2020. Public Service and all the parties have agreed to the requested relief.³

³ Unopposed Motion at pages 2-3.

Rule 1408 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, sets forth the Commission's policy to encourage the settlement of contested proceedings. When parties to contested proceedings have negotiated a comprehensive settlement in principle, a common practice is for the parties to move to amend the adopted procedural schedule in order to focus on finalizing the settlement.⁴ When such a motion is unopposed and states good cause, modifications to the adopted procedural schedule are often granted in order to promote the Commission's policy of encouraging settlements in contested proceedings.

B. Findings and Conclusions.

Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, responses to the Unopposed Motion would usually be due 14 days after service on the Parties, or no later than December 30, 2019. Because all Parties have agreed to the Unopposed Motion, consideration of responses will be unnecessary. Therefore, the request to waive response time to the Unopposed Motion will be granted.

The ALJ finds and concludes that Public Service has stated good cause for the requested suspension of the adopted procedural schedule and modification of the date for filing of the written Settlement Agreement. The Unopposed Motion will be granted.

This Decision will order that the written Settlement Agreement be filed **no later than January 8, 2020.**

The ALJ will order that Public Service, Staff, and other Parties who wish to do so will file written testimony, and attachments if needed, in support of approval of the Settlement Agreement. The settlement testimony should explain why the Settlement Agreement is just and reasonable and

⁴ See Rule 1502(e), 4 CCR 723-1, which states: "Nothing in this rule prohibits . . . a motion to amend a procedural schedule set forth in an interim decision."

not contrary to the public interest. The settlement testimony will be due **no later than 5:00 p.m. on January 8, 2020.**

The ALJ will vacate the evidentiary hearing scheduled for January 22, 2020.

A hearing on the written Settlement Agreement will be scheduled for January 23, 2020, which date is already reserved in the Commission's calendar for a hearing in this Proceeding.

The ALJ will suspend the remaining procedural deadlines established by Decision Nos. R19-0827-I and R19-0958-I in part, including the deadlines for filing Answer Testimony and Attachments; Rebuttal and Cross-answer Testimony and Attachments; and Statements of Position.

The deadline for Public Service to file final electronic versions of all Hearing Exhibits, including Corrections to Pre-filed Testimony and Attachments, will not be suspended, but will be extended to January 16, 2020, one week before the Settlement Hearing. Also Public Service and the Parties will be ordered to file, no later than January 16, 2020, a notice clarifying what electronic exhibits they wish to be admitted at the Settlement Hearing.

The requirements and deadlines, pursuant to Rule 1405, 4 CCR 723-1, and Decision No. R19-0827-I, related to serving discovery requests, as well as the obligation to serve responses to all pending discovery requests, will be suspended as of the effective date (*i.e.*, the mailed date) of this Decision.

Other Interim Decisions on procedural matters may be issued prior to the date of the Settlement Hearing.

II. ORDER

A. It Is Ordered That:

1. The Unopposed Motion to Suspend Procedural Schedule and Request for Waiver of Response Time (Unopposed Motion), filed on December 16, 2019 by Public Service Company of Colorado (Public Service), is granted, consistent with the findings and conclusions in this Decision.

2. Response time to the Unopposed Motion shall be waived, pursuant to Rule 1308(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

3. Public Service's request to suspend the adopted procedural schedule is granted in part, consistent with the findings and conclusions in this Decision.

4. Public Service shall file the signed, written Settlement Agreement no later than 5:00 p.m. on January 8, 2020.

5. Public Service, Trial Staff of the Colorado Public Utilities Commission, and other settling Parties who wish to do so shall file written testimony, and attachments if needed, in support of approval of the Settlement Agreement no later than 5:00 p.m. on January 8, 2020.

6. The evidentiary hearing scheduled for January 22, 2020 shall be vacated.

7. A hearing on the written Settlement Agreement is scheduled in this Proceeding as follows:

DATES: January 23, 2020
TIME: 9:30 a.m.
PLACE: Hearing Room
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

8. The deadline for Public Service to file final electronic versions of all Hearing Exhibits, including Corrections to Pre-filed Testimony and Attachments, shall be extended to January 16, 2020, one week before the Settlement Hearing.

9. No later than January 16, 2020, Public Service and the Parties shall file a notice clarifying what electronic exhibits they wish to be admitted at the Settlement Hearing.

10. The requirements and deadlines, pursuant to Rule 1405 of the Rules of Practice and Procedure, 4 CCR 723-1, and Decision No. R19-0827-I (mailed on October 8, 2019) related to serving discovery requests and the obligation to serve responses to all pending discovery requests, shall be suspended as of the effective date of this Decision.

11. This Decision is 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