

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

PROCEEDING NO. 19A-0225E

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS COMMUNITY RESILIENCY INITIATIVE PURSUANT TO § 40-2-203(4), C.R.S.

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

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Mailed Date: May 1, 2020

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

1. On May 1, 2019, Public Service filed with the Colorado Public Utilities Commission (Commission), a Verified Application (Application) for Approval of its Community Resiliency Initiative (Initiative). Public Service Company of Colorado (Public Service or Company) stated that the Initiative is designed to provide up to 15 megawatts of Company-owned energy storage systems to enhance the safety and security of designated community resiliency centers and select infrastructure. Public Service explained that the Application was filed in accordance with Colorado's Energy Storage Procurement Act (House Bill (HB) 18-1270). This filing commenced the above-styled proceeding.<sup>1</sup>

2. By Decision No. C19-0499-I (mailed on June 12, 2019), the Commission granted the Company's Motion for Leave to File Supplemental Direct Testimony that was filed on May 1, 2019. On December 16, 2019, pursuant to Decision No. C19-0499-I (mailed on June 12, 2019), Public Service filed the Supplemental Direct Testimony of two witnesses, Jack W. Ihle and Charles A. Gouin.<sup>2</sup>

3. 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.

4. During the Commission's weekly meeting on January 29, 2020, the Application was deemed complete for purposes of § 40-6-109.5, C.R.S., and was referred to an

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<sup>1</sup> Application at pages 1-7. HB 18-1270 is codified at § 40-2-203(4), C.R.S. (2019). With the Application, Public Service filed the supporting testimony and attachments of three witnesses.

<sup>2</sup> Public Service filed Mr. Gouin's Corrected Supplemental Direct Testimony on December 19, 2019.

Administrative Law Judge (ALJ) for disposition. The undersigned ALJ was subsequently assigned to preside over this Proceeding.

5. The Parties to this Proceeding are Public Service, Trial Staff of the Colorado Public Utilities Commission (Staff), the Colorado Office of Consumer Counsel (OCC), Western Resource Advocates (WRA), and the Rocky Mountain Environmental Labor Coalition and the Colorado Building and Construction Trades Council, AFL-CIO (together RMELC/CBCTC).<sup>3</sup>

6. On February 12, 2020, Public Service filed a Consensus Procedural Schedule, which was agreed to by all the Parties.

7. By Decision No. R20-0100-I (mailed February 13, 2020), the ALJ *inter alia* adopted a procedural schedule with various filing dates and set an evidentiary hearing for June 23, 24, and 25, 2020. That Decision indicated that the presentation of electronic exhibits at the hearing would be addressed in a separate Interim Decision.

8. On April 27, 2020, Public Service filed a Notice of Settlement in Principle and Unopposed Motion to Vacate Procedural Schedule and Request for Waiver of Response Time (Unopposed Motion). Public Service stated that on April 23, 2020, the Settling Parties reached a settlement in principle resolving all issues in this Proceeding. Under the adopted procedural schedule, answer testimony and attachments were due on April 27, 2020. Joined by all Parties, Public Service requests that the ALJ vacate the upcoming procedural deadlines, and order new procedural deadlines for filing the Settlement Agreement (May 1, 2020) and testimony in support

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<sup>3</sup> See Decision No. R20-0081-I (mailed on February 6, 2020).

of the Settlement Agreement (May 8, 2020). Public Service proposes due dates of May 1, 2020 and May 8, 2020, respectively. Public Service does not ask that the hearing dates be vacated.<sup>4</sup>

9. Decision No. R20-0307-I (mailed April 27, 2020), granted the Unopposed Motion, vacated the remaining deadlines in the existing procedural schedule; adopted May 1, 2020 as the date for filing the written Settlement Agreement; vacated the evidentiary hearing on the merits set for June 24 and 25, 2020; and reserved June 23, 2020 for a hearing on the written Settlement Agreement. The Decision stated that, “For purposes of the hearing on the written Settlement Agreement, if held, a separate Interim Decision may be issued addressing the presentation of electronic exhibits at the settlement hearing to the fullest extent possible.”<sup>5</sup>

**B. Presentation of Exhibits Electronically Submitted During Evidentiary Hearing**

10. As noted above, the presentation of evidence at the June 23, 2020 hearing shall be done through electronic exhibits to the fullest extent possible, with the exception of exhibits admitted in paper form during the hearing. 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).

11. To facilitate the presentation of exhibits electronically during the settlement hearing, the Commission will provide a spreadsheet identifying each hearing exhibit as it exists

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<sup>4</sup> Unopposed Motion, ¶¶ 3 through 7 at pages 2 and 3.

<sup>5</sup> Decision No. R20-0307-I, ¶ 20 at page 5.

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 the hearing and marked as a hearing exhibit. Administrative hearings section Staff will display pre-filed electronic filings during the hearing.<sup>6</sup>

12. Final versions of all hearing exhibits must be filed **on or before** seven days prior to the hearing, or no later than June 16, 2020, unless otherwise ordered, so that the spreadsheet may be timely prepared and distributed during the three business days prior to the hearing. Hyperlinks will not be included for confidential or highly confidential information.

13. After this deadline, any exhibit that is intended to be offered into evidence: (a) may be filed for the limited purpose of disclosure and shall not be marked for identification; (b) shall be marked for identification during the 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* 723-1; and (c) will neither be included in the spreadsheet of electronic exhibits nor admitted in electronic form by administrative notice pursuant to this Decision.

14. If the hearing is held by remote video conference, it will not be technically possible for any Party to offer for admission during the hearing a pre-filed exhibit in paper form. Only the electronic versions of pre-filed exhibits will be considered for admission into evidence.

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<sup>6</sup> If the hearing is held as an in-person hearing, exhibits will be displayed on large monitors in the hearing room. If the hearing is held by remote video conference, exhibits will be displayed on the video screen. Should the parties have technical questions relating to the electronic presentation of exhibits, they may contact Ms. Christie Nicks at (303) 894-2010.

**C. Assignment of Hearing Exhibit Number Blocks**

15. Hearing exhibits shall be marked numerically and sequentially for identification by the filing Parties within their respective blocks of numbers. In order to efficiently organize the numbering and preparation of exhibits for the hearing, 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.

16. Public Service, as the Party initiating the proceeding, is assigned hearing exhibit numbers 100 to 299. The written Settlement Agreement should be assigned the next number after Public Service's pre-filed exhibits have been numbered.

17. Each intervening person or entity is assigned a block of 100 hearing exhibit numbers (*e.g.*, 300-399, 400-499, etc.) in the order the Parties are listed in Paragraph 5 of this Decision. For clarity, the following blocks of hearing exhibit numbers are assigned to the Parties:

- a) Public Service                      100 to 299;
- b) Staff                                      300 to 399;
- c) OCC                                        400 to 499;
- d) WRA                                        500 to 599; and
- e) RMELC/CBCTC                      600 to 699.

18. Since the June 23, 2020 hearing, if needed, will be on the written Settlement Agreement, it is not expected that any exhibits would be first presented at the hearing.

**D. Identification and Filing Requirements for Hearing Exhibits**

19. 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 Interim Decision.<sup>7</sup>

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

21. The title of all pre-filed written testimony 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."

22. Anything accompanying pre-filed written testimony within a hearing exhibit (*e.g.*, 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. For example, if the party assigned block 300 files answer testimony of Albert B. Cooke, that includes a table as Attachment ABC-1, then the

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<sup>7</sup> In order to minimize the size and to 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. *See also* Paragraphs 28 through 32 at pages 8 and 9 *infra*. The PDF versions generated by the filer are important, and they should be carefully formatted for legibility, because they will be part of the evidentiary record.

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.

23. Since the June 23, 2020 hearing, if needed, will be on the written Settlement Agreement, it is not expected that any exhibits would be offered or admitted for purposes of impeachment or rebuttal.

**E. Formatting of Hearing Exhibits**

24. The first page of **all** hearing exhibits shall be page 1, with each additional page numbered in succession. This will match the page numbers to the electronic file page numbers, which will facilitate electronic navigation during the hearing. For example, the cover page shall be page 1, and all following pages shall be numbered sequentially, including executive summaries, tables of contents, and lists of attachments.

25. There shall be only one page number shown on each page of hearing exhibits. 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).

26. 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.*, widen a paragraph margin to insert a word).

27. 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**

28. Any spreadsheet filed as, or that is the basis for, an attachment to a hearing exhibit shall be filed in both .pdf format and in the native executable electronic file format (*e.g.*, .xlsx, .ods, .gsheet).

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

30. 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.

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

32. 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 the Deadline for Corrections**

33. Should a party need to modify, amend, or correct a previously identified hearing exhibit **on or before June 16, 2020**, the following procedures shall be followed.

34. If the native executable electronic file format is **not** a spreadsheet, a complete revision including all changes in redline/strikeout format shall be filed.<sup>8</sup> 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.

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<sup>8</sup> Filing a “clean” version is not necessary and is discouraged.

35. For example, if Hearing Exhibit 100, Direct Testimony of John J. Doe changed, it would be filed as Hearing Exhibit 100, Direct Testimony of John J. Doe, Rev. 1 containing redlined modifications to the original version.<sup>9</sup> If an additional revision is later filed, 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.

36. 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.

37. The most recent revision of a hearing exhibit shall be the version utilized during the settlement 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), as long as the

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<sup>9</sup> “Rev.” stands for revision.

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 revision is filed to such direct testimony, as 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 the Deadline for Corrections**

38. Should a party need to modify, amend, or correct a previously identified hearing exhibit **after June 16, 2020**, or during the hearing, the following procedures shall be followed.<sup>10</sup>

39. 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 the hearing.<sup>11</sup> The replacement pages shall collectively be marked for identification at the time of the 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.

40. 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 the 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.

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<sup>10</sup> These procedures will apply if the settlement hearing is conducted as an in-person hearing. If the hearing is held by remote video conference, the Parties are strongly encouraged to file any modified, amended, or corrected previously identified hearing exhibit on or before June 23, 2020, and are discouraged from filing any such exhibits after the June 23, 2020 deadline or during the hearing.

<sup>11</sup> Filing a "clean" version is not necessary and is discouraged.

Additionally, a complete revision of the executable spreadsheet, including all changes, shall be filed in accordance with Section F above.

41. If the changes are permitted, and assuming the original filing otherwise admissible, both hearing exhibits would be admitted into evidence during the hearing with the latter replacement pages superseding and prevailing to the extent of conflict in the previous revision.

42. 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), as 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**

43. 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.

44. 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 (and should be redacted to exclude the confidential material).

45. 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 for an exhibit continuing any highly confidential would be designated with an “HC” following the number.

46. 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.<sup>12</sup>

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<sup>12</sup> 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.

2. Any spreadsheet filed as, or that is the basis for, an attachment to a hearing exhibit shall be filed in both .pdf format and in the native executable electronic file format (*e.g.*, .xlsx, .ods, .gsheet), in accordance with the instructions in this Decision.

3. To comply with this Decision, Public Service Company of Colorado shall revise and re-file the testimony it filed with its Application and as supplemental direct testimony, in accordance with ordered procedures and the discussion above **no later than May 4, 2020**. For purposes of this Decision, any such filings shall be treated as the original filing of hearing exhibits.<sup>13</sup>

4. All corrections to any pre-filed hearing exhibits marked for identification shall be filed **no later than June 16, 2020**.

5. Any objections to the admissibility of the form of any pre-filed hearing exhibits marked for identification (*e.g.*, authenticity) shall be filed in writing **no later than June 19, 2020**.

6. At the hearing, if conducted as an in-person 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.

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<sup>13</sup> 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 an exhibit), as long as the reference remains in reasonable proximity to the referenced material.

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