

Decision No. R20-0429-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0225E

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.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
VACATING SETTLEMENT HEARING
AND OTHER PROCEDURAL DATES; AND ADMITTING
ALL PREFILED TESTIMONY AND ATTACHMENTS
BY ADMINISTRATIVE NOTICE**

Mailed Date: June 9, 2020

I. STATEMENT, FINDINGS, AND CONCLUSIONS.

1. This Interim Decision vacates the hearing on the Settlement Agreement scheduled for June 23, 2020 at 9:00 a.m.; vacates certain procedural deadlines adopted in Decision No. R20-0325-I (mailed on April 30, 2020); and admits into the record of this Proceeding, by administrative notice, all hearing exhibits in their electronic form as pre-filed by the Parties and existing in the Commission's E-filing System files.

A. Procedural History.

2. 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 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.¹

3. On May 1, 2019, Public Service also filed a Motion for Leave to File Supplemental Direct Testimony on or before December 16, 2019, in order to provide details on the energy storage system projects and construction partners selected through a competitive solicitation process and, to the extent practicable, information on the cost and construction details of each project proposed under the Initiative. Public Service also waived the statutory deadline in § 40-6-109.5(3), C.R.S.²

4. By Decision No. C19-0426-I (mailed on May 16, 2019), the Commission acknowledged Public Service's waiver of the statutory deadline pursuant to § 40-6-109.5(3), C.R.S.³

5. By Decision No. C19-0499-I (mailed on June 12, 2019), the Commission granted the Motion for Leave to File Supplemental Direct Testimony. On December 16, 2019, Public Service filed the Supplemental Direct Testimony of two witnesses, Jack W. Ihle and Charles A. Gouin.⁴

6. The procedural history of this Proceeding is set forth in detail in Decisions previously issued herein and is repeated here as necessary to put this Decision into context.

¹ Application at pages 1-7. HB 18-1270 is codified at § 40-2-203(4), C.R.S. (2019).

² Motion for Leave to File the Supplemental Direct Testimony at pages 1-3.

³ In Decision No. C19-0426-I, the Commission also gave interested parties 14 days to file responses to the Motion for Leave to File Supplemental Direct Testimony. No responses were filed.

⁴ With the Application, Public Service had filed the supporting testimony and attachments of three witnesses. Public Service filed Mr. Gouin's Corrected Supplemental Direct Testimony on December 19, 2019.

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

8. 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).⁵

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

10. 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.

11. 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 requested that the ALJ vacate the upcoming procedural deadlines, and order new procedural deadlines for filing the Settlement Agreement and testimony in support

⁵ See Decision No. R20-0081-I (mailed on February 6, 2020).

of the Settlement Agreement with proposed due dates of May 1, 2020 and May 8, 2020, respectively.⁶

12. Decision No. R20-0307-I (mailed April 27, 2020) granted the Unopposed Motion; vacated the remaining deadlines in the existing procedural schedule; set May 1, 2020 as the date for filing the written Settlement Agreement; set May 8, 2020 as the date for filing testimony in support of the 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.

13. Decision No. R20-0325-I (mailed on May 1, 2020) established guidelines and requirements for the presentation of electronic exhibits at the hearing. The Decision stated that, “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 The Decision also ordered that final versions of all hearing exhibits must be filed no later than June 16, 2020, and that written objections to the admissibility of any pre-filed hearing exhibits must be filed no later than June 19, 2020.⁸ Finally, if there would be an adversarial evidentiary hearing, Decision No. R20-0325-I noted that Administrative Hearings Section staff would distribute to the Parties, prior to the hearing, a spreadsheet identifying each hearing exhibit existing in the administrative record and including hyperlinks to the filings in the administrative record. At the evidentiary hearing, the electronic copies of hearing exhibits in the Commission’s E-filing System files, as

⁶ Unopposed Motion, ¶¶ 3 through 7 at pages 2 and 3.

⁷ Decision No. R20-0325-I, ¶ 10 at page 4.

⁸ *Id.*, Ordering Paragraphs Nos. 4 and 5 at page 14.

identified in the spreadsheet hearing exhibit, would be admitted into evidence by administrative notice, in lieu of admitting the identical paper copy at the hearing.⁹

14. On May 1, 2020, Public Service filed the signed Settlement Agreement (Hearing Exhibit 106). On May 8, 2020, Public Service filed the testimony of Jack W. Ihle in support of approval of the Settlement Agreement (Hearing Exhibit 107).¹⁰

15. On May 4, 2020, Public Service filed electronic copies of its pre-filed testimony and attachments correctly numbered as hearing exhibits pursuant to the instructions in Decision No. R20-0325-I.

16. On May 8, 2020, WRA filed the testimony and attachments of Aaron Kressig in support of approval of the Settlement Agreement (Hearing Exhibit 500). Also on May 8, 2020, Staff filed the testimony and attachments of Mimi Xavier and Karl Kunzie in support of approval of the Settlement Agreement (Hearing Exhibits 300 and 301, respectively).

B. Whether the Settlement Hearing is Necessary.

17. The ALJ has reviewed the Settlement Agreement and all of the testimony and attachments filed in support of approval of the Settlement Agreement. The ALJ has concluded that the testimony filed in support of the Settlement Agreement is robust and complete. As a result, the ALJ has determined that a hearing on the Settlement Agreement is not necessary. Therefore, the hearing scheduled for June 23, 2020 at 9:00 a.m. will be vacated.

18. As noted in Paragraph No. 13 *supra*, Decision No. R20-0325-I ordered final versions of all hearing exhibits to be filed no later than June 16, 2020, and written objections to

⁹ *Id.*, ¶¶ 10 through 12 at pages 4 and 5.

¹⁰ On June 2, 2020, Public Service filed a Notice of Substitution of Witness and Adoption of Settlement Testimony, advising that Ms. Brooke A. Trammell was substituted for Mr. Ihle and that she was adopting Mr. Ihle's testimony in support of the Settlement Agreement. No Party opposed the substitution of witness.

the admissibility of any pre-filed hearing exhibits to be filed no later than June 19, 2020. Since the hearing on the Settlement Agreement is being vacated, the June 16 and 19, 2020 filing dates will also be vacated.

19. Since the hearing on the Settlement Agreement is being vacated, the requirement for the Administrative Hearings Section staff to distribute to the Parties, prior to the hearing, a spreadsheet identifying each hearing exhibit existing in the administrative record, will also be vacated.

20. Pursuant to Rule 1501(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, the ALJ will admit by administrative notice all hearing exhibits, in their electronic form as pre-filed by the Parties and existing in the Commission's E-filing System files, into the record of this Proceeding.

21. The Recommended Decision on whether or not the Settlement Agreement will be approved will be issued in due course.

II. **ORDER**

A. **It Is Ordered That:**

1. The hearing on the Settlement Agreement, scheduled for June 23, 2020 at 9:00 a.m., is vacated.

2. The requirements, ordered by Decision No. R20-0325-I (mailed on April 30, 2020), that final versions of all hearing exhibits must be filed no later than June 16, 2020, and that written objections to the admissibility of any pre-filed hearing exhibits must be filed no later than June 19, 2020, are vacated.

3. The requirement, ordered by Decision No. R20-0325-I, for the Administrative Hearings Section staff to distribute to the Parties, prior to the hearing, a spreadsheet identifying each hearing exhibit existing in the administrative record is vacated.

4. Pursuant to Rule 1501(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, all hearing exhibits in their electronic form, as pre-filed by the Parties and existing in the Commission's E-filing System files, are admitted by administrative notice into the record of this Proceeding.

5. 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