Decision No. R24-0330-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0589EG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS COMBINED ELECTRIC AND NATURAL GAS DEMAND-SIDE MANAGEMENT AND BENEFICIAL ELECTRIFICATION PLAN FOR CALENDAR YEARS 2024-2026.

INTERIM DECISION OF ADMINISTRATIVE LAW JUDGE MELODY MIRBABA VACATING HEARING DATES

Mailed Date: May 14, 2024

I. STATEMENT, SUMMARY AND BACKGROUND

A. Summary

1. This Decision vacates the hearing scheduled for May 14, 15, and 16, 2024, while maintaining the May 17, 2024 hearing date, and memorializes rulings made during the May 13, 2024 hearing.

B. Procedural History[1]

2. On December 1, 2023, Public Service Company of Colorado (Public Service or the Company) filed the above-captioned Application with testimony and attachments. Since then, the Commission referred this matter for disposition to an administrative law judge (ALJ), who established procedural deadlines and scheduled a five-day fully remote evidentiary hearing starting on May 13, 2024.[2]

[1] Only the procedural history necessary to understand this Decision is included.
[2] Decision Nos. C24-0054-I (mailed January 23, 2024) and R24-0086-I (mailed February12, 2024).

3. In addition to the Company, the following entities are parties to this Proceeding: the Colorado Public Utilities Commission Trial Staff, the Colorado Energy Office (CEO), the Colorado Office of the Utility Consumer Advocate, the City of Boulder, Western Resource Advocates, Natural Resources Defense Council, the Sierra Club, Southwest Energy Efficiency Projects, the City and County of Denver, Energy Outreach Colorado, Energy Efficiency Business Coalition, Clean Energy Economy for the Region, Climax Molybdenum Company, Colorado Energy Consumers, and Iconergy LTD.[3]

4. The parties have filed voluminous written testimony and other exhibits consistent with the procedural deadlines established by Decision No. R24-0086-I.

5. Settlement agreements and stipulations were due on April 29, 2024, and settlement testimony was due on May 3, 2024.[4] No settlement agreements, stipulations or settlement testimony were filed. As such, this Proceeding is fully contested.

6. On May 9, 2024, the ALJ provided written notice that she would hear from the parties during the evidentiary hearing set for May 15, 2024 on whether extraordinary conditions exist that justify an extension of the statutory deadline under § 40-6-109.5(4), C.R.S.[5]

7. The ALJ convened the evidentiary hearing on May 13, 2024 as noticed. All parties appeared.

II. FINDINGS AND DISCUSSION

8. During the May 13, 2024 hearing, the ALJ asked the parties if they were aware that during deliberations that occurred the week of May 6, 2024 in the Company's Clean Heat Plan

[3] Decision No. R24-0086-1 at 23.
[4] Decision No. R24-0086-I at 15.
[5] Decision No. R24-0323-I (mailed May 9, 2024).

(Proceeding No. 23A-0392EG) (Clean Heat Proceeding), the Commission identified a list of 15 guidance items (Commission guidance) for the parties to use in developing approaches to coordinate use of funding from the Clean Heat Proceeding and funding approved in the Company's Strategic Issues Proceeding (No. 22A-0309EG)(SI Proceeding). As noted during the hearing, the Commission approved a budget in the SI Proceeding for the Company to adhere to in the Plan it presents in this case.[6] As such, the Commission's guidance is intended to be applied in developing an approach to coordinate spending from funding arising out of the Plan in this case with spending from funding approved in the Clean Heat Proceeding. For all these reasons, at the onset of the May 13, 2024 hearing, the ALJ asked the parties whether, and if so, how the Commission's guidance could be incorporated and addressed in this case, given timing considerations.

9. During the hearing, to provide the parties context, the ALJ identified the following Commission's guidance to develop approaches to coordinate use of funding approved in the Clean Heat Proceeding and funding approved in the Company's SI Proceeding:

- Align demand-side management (DSM) and beneficial electrification (BE) offerings on incentives, eligible measures, customer eligibility, required forms, marketing, customer finance, and other program design elements so there is minimal potential for confusion among customers, contractors, and other program participants. This is intended to ensure that DSM and BE program participants' experience does not differ based on the source of the funds, or the proceeding in which the Commission approved the funds.
- Prioritize air conditioning replacements with heat pumps as a cost-effective and efficient first step toward broader electrification.
- Directly incent contractors to install BE and DSM measures. The Commission suggests the parties consider contractor incentives at roughly 10 to 15 percent of customer levels.
- Establish (and/or modify in the future) incentive levels for customers and contractors so that annual BE adoption levels, at a minimum, reach the yearly CEO Roadmap values. BE Adoption levels should be tracked and reported by, at a minimum: air source

[6] Decision No. C23-0413, ¶¶ 35-36 and 52-53 (mailed June 22, 2023) in Proceeding No. 22A-0309EG.

heat pumps (ASHP), cold climate heat pumps (ccHP) and heat pump water heaters (HPWH).

- Appliance incentives should be available at the time and place of purchase if procured at a retail seller (*e.g.*, Home Depot or Lowes).

- Ideally, a significant majority of contractors that work in the Company's service territory should be eligible to receive incentives.

- BE and DSM planning and reporting should include: the number of measures adopted; the appliance being replaced (as applicable); the utility cost for each measure adopted; the projected energy and emissions savings for each measure adopted; the unitized cost of energy and emissions savings; and the total measures adopted as a percent of the applicable total market activity in the PSCo service territory (as reasonably determined).

- Because the Company is likely to receive (for the time being), different inducements from implementation of the BE and DSM programs via the SI and Clean Heat Proceedings, it should clearly track the expenditure of funds and which budget they fall under. Expenditures should not receive both inducements (*i.e.*, a performance incentive mechanism and amortization) available from the SI and Clean Heat Plan Proceedings.

- Funds and budgets approved in the SI and Clean Heat Proceedings should be spent in the following order: 1) SI funds as specifically approved under the Commission's Decision in the SI Proceeding (Decision No. C23-0413 in Proceeding No. 22A-0309EG, mailed June 22, 2023) before including the flexibility budgets; 2) Clean Heat Proceeding funds as specifically approved in that Proceeding before including the flexibility budgets; 3) the flexibility budgets approved in the Clean Heat Proceeding (per the Commission's oversight of such funds); and 4) the flexibility budgets approved in the SI Proceeding.

- Flexibility funding should produce proportional energy savings and/or emission reductions on a unitized basis as primary funding for all resources unless the Company can explain the necessity to change the unit values embedded in the approved primary funding levels.

- Assess the split incentives issue to determine the number of income qualified and disproportionately impacted customers (separately) that own their home vs. rent; and whether landlords are properly incented to invest in BE and DSM measures in these communities. If possible, the parties should work to meaningfully develop tariffed-on-bill financing options and other tools to solve for split incentives.

- Acquire cost information for measures installed from participating contractors; square footage and age of home; measure capacity (*e.g.*, in cooling tons); installation location; and other data as to support refining incentives without creating a burden on contractor participation.

- Program implementation should allow and leverage third-party implementation entities (where reasonably possible) to expand customer and contractor awareness of and participation in DSM and BE programs. Third-party implementers may be paid for signing up eligible contractors and customers.
- Cost recovery, including a reasonable Company inducement, should be aligned across funds initiated from both SI and Clean Heat Proceedings over the next 12 to18 months. Essentially, the Company should be provided a consistent and clear financial signal to run the programs effectively and efficiently, with an appropriate level of collaboration and oversight from stakeholder parties.
- Ideally, cost-effectiveness evaluations should be aligned across funds initiated from both SI and CHP applications over the next 12 to 18 months. The Commission plans to open a rulemaking or miscellaneous docket to assess options and approaches, given statutory requirements and the pros and cons of alternative cost effectiveness tests and evaluation approaches.

10. In response, the Company proposed two options. First, the Company agreed to waive the statutory deadline for a final Commission decision in this Proceeding per § 40-6-109.5, C.R.S. (if this Proceeding is held in abeyance) until the Commission issues a final decision in the Clean Heat Proceeding. The Company suggested that 30 days after the Commission issues that final decision, an evidentiary hearing in this case could be scheduled, and that if the parties are not able to reach a settlement agreement, that they could provide live testimony on issues relating to the Commission's guidance in the Clean Heat Proceeding, with cross-examination on that and any non-settled issues. The Company also noted that it would separately seek to implement the Clean Heat Plan through the 60/90-day notice process that is approved in the Clean Heat Proceeding, which should not implicate specific programs that are to be decided here.

11. Second, the Company proposed that the hearing proceed as scheduled, and that the parties not be permitted to cross examine witnesses on the deliberation items from the Clean Heat Proceeding that are not final, with the understanding that such items can be incorporated at a later date through an additional process, such as a 60/90-day notice process or an updated Plan.

12. The parties expressed varying sentiments about the Company's proposals and how the Commission's guidance in the Clean Heat Proceeding could be incorporated here. Many parties expressed concern about significant delay in issuing a final decision in this Proceeding, noting, for example, that this might unnecessarily delay implementing programs that are unopposed. Parties also expressed concern that significant delay could have other impacts, such as delaying the Company's ability to meet emission reduction goals and serving income qualified communities.

13. CEO suggested that the case be recessed and reconvened some days later so that the parties have time to identify topics that are unrelated to the Clean Heat Proceeding, which could be addressed separately from those implicated by the Clean Heat Proceeding. Essentially, this would result in bifurcating the hearing on the Plan.

14. As noted during the hearing, while the ALJ appreciates the Company's efforts to identify an approach that would allow the parties to incorporate the Commission's guidance from the Clean Heat Proceeding once that guidance is memorialized in a final decision, the ALJ shares parties' concerns with significant delay, particularly given that there may be uncontested issues and issues that are unaffected by the Clean Heat Proceeding. Based on this, the ALJ is not inclined to hold this Proceeding in abeyance pending the final outcome in the Clean Heat Proceeding. Likewise, while the ALJ appreciate CEO's suggestion to bifurcate the hearing, the ALJ is concerned that this would create inefficiencies and is concerned about the practicalities of attempting to limit evidence during specific hearings to specific issues given the potential overlap of issues. As such, for the time being, the ALJ rejects these options (as noted during the hearing).

15. As to the Company's second option, should the matter proceed to an evidentiary hearing, the ALJ will not restrict the parties from cross-examining witnesses concerning the

Commission's guidance. In fact, during May 13, 2024 hearing, the ALJ directed the parties to do their best to address the Commission's guidance in this Proceeding during the evidentiary hearing (or through a settlement agreement). While the ALJ understands the Company's concern that the guidance has not been made final and that a written decision is not expected until May 28, 2024, in light of the circumstances, live testimony on the Commission's guidance is the most reasonable approach. This includes live testimony offered through direct and cross examination. The ALJ acknowledges that the parties have had little opportunity to consider the Commission's guidance and that the guidance is not memorialized in a final decision; as such, their efforts to address these items will be considered with this in mind. As noted below, the ALJ vacated the May 14, 15, and 16, 2024 hearing dates and will reschedule the evidentiary hearing as needed. The parties may be able to use this additional time to determine how to address the Commission's guidance.

16. Also during the May 13, 2024 hearing, several parties, including the Company, expressed interest in settlement.

17. Based on the discussion during the hearing, the ALJ vacated the hearing scheduled for May 14, 15, and 16, 2024, and left the May 17, 2024 hearing untouched. This is intended to allow the parties time to discuss possible settlement, whether comprehensive or partial. As a part of these discussions, the parties should consider discussing potential approaches to incorporating the Commission's guidance.

18. The ALJ will hear from the parties during the hearing scheduled for May 17, 2024 at 9:00 a.m. as to whether a settlement agreement is forthcoming. If the parties indicate that settlement is not possible (even partial settlement), the ALJ will hold the first day of the evidentiary hearing at that time and will schedule additional hearing dates for the near future, as needed. If the

parties indicate that they may reach a settlement with some additional time, the evidentiary hearing will not proceed on May 17, 2024, and the ALJ will instead establish a deadline to file a settlement agreement and new evidentiary hearing dates. In this circumstance, the hearing would address the settlement agreement (as necessary) and remaining disputed issues (if any).

19. The ALJ also noted that until the above issues are resolved, she is unable to decide whether extraordinary conditions exist to justify an extension for the statutory deadline under § 40-6-109.5(4), C.R.S. For example, a settlement agreement that significantly narrows the disputed issues or comprehensively resolves the disputes in this Proceeding would impact whether extraordinary conditions exist. Likewise, the need for and timing of an evidentiary hearing may impact whether extraordinary conditions exist. As these are both unknown factors, the ALJ cannot decide this question without additional information. This Decision provides notice that if this information is provided during the May 17, 2024 hearing, the ALJ will hear from the parties during that hearing as to whether extraordinary conditions exist. Failing that, the ALJ will provide notice via separate written order as to when, if at all, she will hold a hearing on whether extraordinary conditions exist.

20. During the hearing, a party asked whether a partial settlement agreement could be approved and go into effect while disputed issues proceed on a parallel track to a hearing and recommended decision. The ALJ expressed concerns about this due to procedural restraints, and the potential that that settled issues may be relevant to disputed issues. It is difficult to determine without a settlement agreement whether settled issues will overlap with disputed issues. However, the ALJ has determined that there is a process that could be employed to allow for a partial settlement agreement to be approved and go into effect while disputed issues proceed on a parallel

track to a hearing and recommended decision. Specifically, the ALJ would have to bifurcate this Proceeding such that one part of the case would address a settlement agreement, and the other would address disputed issues. Under this approach, the ALJ would lose authority over the settled issues after issuing a recommended decision, so the ALJ must have high degree of certainty that settled issues will not overlap with disputed issues. The ALJ is concerned about whether such a clear delineation of the issues can be accomplished, but reserves judgment given that no agreement has been filed. In any event, as noted during the hearing, if the parties reach even a partial settlement agreement, a recommended decision can be issued in a quicker timeframe than if all the issues remain disputed.

21. The ALJ strongly encourages the parties to make their best efforts to reach an agreement resolving disputes, particularly disputes involving the technical issues around program design (including equipment eligibility issues), and those which already appear uncontested.

III. ORDER

A. It Is Ordered That:

1. The remote evidentiary hearing scheduled for May 14, 15, and 16, 2024 is vacated.

2. The remote evidentiary hearing scheduled for May 17, 2024 at 9:00 a.m. is unaffected and remains in place, consistent with the above discussion. The parties are on notice that during the hearing scheduled for May 17, 2024, the Administrative Law Judge will hear from the parties as to whether extraordinary conditions exist to warrant extending the deadline for a final Commission decision to issue in this Proceeding, per § 40-6-109.5(4), C.R.S., under the circumstances discussed above.

3. The parties must comply with all other direction and requirements discussed above.

4. 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

Rebecca E. White,
Director