

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
SCHEDULING HEARING, ESTABLISHING NEW
PROCEDURAL DEADLINES,
AND EXTENDING STATUTORY DEADLINE FOR
FINAL COMMISSION DECISION TO ISSUE**

Mailed Date: May 23, 2024

I. STATEMENT, SUMMARY AND BACKGROUND

A. Statement and Summary

1. This Decision establishes deadlines to file an anticipated settlement agreement, a motion in support of the same, additional exhibits prompted by the settlement agreement, and Statements of Position (SOPs); schedules a fully remote evidentiary hearing on the anticipated settlement agreement for July 15 and 16, 2024; enters other orders relating to the evidentiary hearing; and extends the statutory deadline for a final Commission decision to issue per § 40-6-109.5(4), C.R.S.

B. Procedural History¹

2. On December 1, 2023, Public Service Company of Colorado (Public Service or the Company) filed the above-captioned Application with testimony and attachments.

¹ Only the procedural history necessary to understand this Decision is included.

3. 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 At the same time, the ALJ extended the statutory deadline for a final Commission decision to September 24, 2024, per § 40-6-109.5(1), C.R.S.³

4. In addition to the Company, the following entities are parties to this Proceeding: the Colorado Public Utilities Commission Trial Staff, the Colorado Energy Office, 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 (CEC), and Iconergy LTD (Iconergy).⁴

5. The parties have filed voluminous written testimony and other exhibits consistent with the established deadlines.

6. Settlement agreements and stipulations were due on April 29, 2024, and settlement testimony was due on May 3, 2024.⁵ No settlement agreements, stipulations or settlement testimony were filed. As such, as of the start of the evidentiary hearing on May 13, 2024, this Proceeding was fully contested.

7. 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

² Decision Nos. C24-0054-I (mailed January 23, 2024) and R24-0086-I at 22-29 (mailed February 12, 2024).

³ Decision No. R24-0086-I at 22.

⁴ Decision No. R24-0086-I at 23.

⁵ Decision No. R24-0086-I at 15.

exist to justify an extension of the statutory deadline for a final Commission decision to issue under § 40-6-109.5(4), C.R.S.⁶

8. The ALJ convened the evidentiary hearing on May 13, 2024 as noticed. All parties appeared. By Decision No. R24-0330-I, the ALJ memorialized what occurred during the May 13, 2024 hearing.⁷ As relevant here, the ALJ vacated the hearing scheduled for May 14, 15, and 16, 2024; maintained the May 17, 2024 hearing date; provided notice that during the May 17, 2024 hearing, the ALJ will hear from the parties as to whether extraordinary conditions exist to warrant extending the deadline for a final Commission decision to issue per § 40-6-109.5(4), C.R.S. (under the circumstances identified in that Decision); and directed the parties to make their best efforts to address the Commission's guidance from the Company's Clean Heat Plan Proceeding (No. 23A-0392EG) through live direct and cross examination testimony, or through a settlement agreement (as applicable).

9. The ALJ held the May 17, 2024 hearing as noticed. All parties appeared. This Decision memorializes the rulings made during that hearing.

II. FINDINGS AND DISCUSSION

10. During the May 17, 2024 hearing, the Company indicated that since the May 13, 2024 hearing was adjourned, the parties worked diligently to reach an agreement and were able to reach a comprehensive settlement in principle of all the issues in this Proceeding. Except for Iconergy and possibly CEC, all parties anticipate being signatories to the settlement agreement.

⁶ Decision No. R24-0323-I (mailed May 9, 2024).

⁷ Decision No. R24-0330-I (mailed May 14, 2024).

Although Iconergy will not be a signatory to the agreement, it will take no position on the agreement. CEC has not yet determined whether it will sign the anticipated settlement agreement.

11. The Company proposed a May 30, 2024 deadline to file the anticipated settlement agreement⁸ and motion supporting the same, with a fully remote hearing on the settlement agreement on July 15 and 16, 2024. No party objected to these proposals. As such, the ALJ approved them, except as noted here. As discussed during the hearing, while the parties may file the motion to approve the settlement agreement when the agreement is filed on May 30, 2024, should additional time be helpful, it may be filed at a later date, but must be filed before the hearing. To avoid confusion, the ALJ establishes a deadline to file the motion to approve the settlement agreement. In addition, although not discussed during the hearing, the ALJ will establish a new deadline for the parties to file SOPs and will vacate the current SOP deadline.

12. Given that the parties anticipate filing a settlement agreement, and the scheduled hearing dates on the agreement, the ALJ determined that consistent with Decision No. R24-0330-I, it was appropriate to address whether extraordinary conditions exist to justify extending the statutory deadline for a final Commission decision to issue per § 40-6-109.5(4), C.R.S., and did so during the May 17, 2024 hearing. The ALJ noted that to meet the current statutory deadline, (September 24, 2024), she would have to issue a recommended decision on or about July 19, 2024. Given the agreed-upon schedule, this is not possible. Moreover, allowing the parties time to finalize a comprehensive and unopposed settlement agreement serves the public interest in numerous ways, including by reducing litigation costs that could be passed onto ratepayers. The

⁸ The ALJ directed the Company to mark the settlement agreement as a hearing exhibit using an available exhibit number from the Company's assigned exhibit numbers, which will facilitate the exhibit's use during the evidentiary hearing.

ALJ noted that all of this warrants a finding that extraordinary conditions exist to justify an extension of the deadline and invited the parties to indicate whether they object to such a finding, or do not believe that the circumstances warrant a finding that extraordinary conditions exist to justify an extension of the statutory deadline. No party objected to such a finding and no party indicated that they do not believe that the circumstances warrant a finding that extraordinary conditions exist to justify an extension of the deadline under § 40-6-109.5(4), C.R.S. Based on the foregoing, the ALJ found that extraordinary conditions exist to justify an extension of the deadline for a final Commission decision to issue, as contemplated by § 40-6-109.5(4), C.R.S., and as such, extended the statutory deadline by 130 days (to February 3, 2025⁹). As noted during the hearing, the ALJ continues to be concerned with significant delay in the resolution of this Proceeding and will endeavor to issue a recommended decision as soon as possible after the hearing.

III. ORDER

A. It Is Ordered That:

1. A remote evidentiary hearing is scheduled as follows:

DATE: July 15 and 16, 2024

TIMES: 9:00 a.m. each day

PLACE: By video conference using Zoom.

2. The parties are responsible for sharing the link, meeting ID code, and passcode with witnesses and others participating in the evidentiary hearing, which will be provided to the parties

⁹ This date is calculated by adding 130 days to the current statutory deadline, that is, September 24, 2024, which results in a February 1, 2025 deadline. Because February 1, 2025 falls on a Saturday, by operation of law, the deadline is automatically extended to the next day that is not a weekend or holiday, which is February 3, 2025. *See* §§ 40-6-109.5(4) and 2-4-108(2)

prior to the hearing. Participants in the hearing may not distribute the link, meeting ID code, and passcode to anyone not participating in the hearing.

3. Non-participants in the evidentiary hearing may observe the hearing live through the Commission's webcast for the Hearing Room assigned for each of the above hearing dates, accessible at: <https://puc.colorado.gov/webcasts>.

4. **Deadline for Settlement Agreement.** The parties must file and serve any settlement agreement they reach on or by May 30, 2024. The settlement agreement must be marked with a hearing exhibit number within Public Service Company of Colorado's assigned hearing exhibit block. A motion in support of such a settlement agreement must be filed on or by July 10, 2024, but may be filed earlier than that. The parties will be permitted to provide live testimony during the evidentiary hearing on the anticipated settlement agreement. No written settlement testimony is required.

5. **Deadline for Additional Exhibits.** Should the settlement agreement prompt the parties to offer into evidence any exhibits not previously filed and served, the parties must file and serve such exhibits on or by June 28, 2024. This deadline replaces the deadline Decision No. R24-0086-I and Attachment B thereto to file final exhibits.

6. **Deadline for Statements of Position.** Statements of Position must be filed on or by July 30, 2024. The June 7, 2024 deadline to file SOPs established by Decision No. R24-0086-I (mailed February 9, 2024) is vacated.

7. **Hearing Procedures.** Unless modified by this Decision, or are rendered moot by the passage of time, the requirements in Decision No. R24-0086-I and Attachments A and B thereto remain in full force and effect and are unaffected by this Decision. As that Decision requires, the

parties are still obligated to review the hearing spreadsheet that will be distributed to them prior to the hearing and confirm that it includes all the exhibits they intend to offer into evidence during the evidentiary hearing.

8. Consistent with the above discussion, the statutory deadline for a final Commission decision to issue in this Proceeding is extended by 130-days to February 3, 2025 as permitted by § 40-6-109.5(4), C.R.S.

9. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

Rebecca E. White,
Director