

Decision No. C24-0808

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.

**COMMISSION DECISION APPROVING, IN PART, AND
DENYING, IN PART, APPLICATION FOR REHEARING,
REARGUMENT OR RECONSIDERATION OF
DECISION NO. C24-0671**

Issued Date: November 7, 2024

Adopted Date: October 30, 2024

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I. <u>BY THE COMMISSION</u>	

A. Statement

1. This Decision approves in part, and denies in part, the Application of Public Service Company of Colorado (“Public Service” or the “Company”) for Rehearing, Reargument, or Reconsideration ("RRR") of Decision No. C24-0671.

B. Background

2. On December 1, 2023, Public Service submitted the above-captioned Application with testimony and attachments. The Application asks the Commission to approve the Company’s combined electric and natural gas 2024-2026 Demand-Side Management (“DSM”) and Beneficial Electrification (“BE”) Plan (“DSM and BE Plan,” or the “Plan”).

3. On January 23, 2024, the Commission referred this matter for disposition to an Administrative Law Judge (“ALJ”).¹

¹ Decision No. C24-0054-I (mailed January 23, 2024).

4. In addition to the Company, the following entities are parties to this Proceeding: the Colorado Public Utilities Commission Trial Staff (“Staff”); the Colorado Energy Office (“CEO”); the Colorado Office of the Utility Consumer Advocate (“UCA”); the City of Boulder (“Boulder”); Western Resource Advocates (“WRA”); Natural Resources Defense Council and the Sierra Club (collectively, “the Conservation Coalition”); Southwest Energy Efficiency Projects (“SWEEP”); the City and County of Denver (“Denver”); Energy Outreach Colorado (“EOC”); Energy Efficiency Business Coalition (“EEBC”); Clean Energy Economy for the Region (“CLEER”); Climax Molybdenum Company (“Climax”); Colorado Energy Consumers (“CEC”), and Iconergy LTD., (“Iconergy”).²

5. On May 30, 2024, the Company filed an Unopposed Motion to Approve Comprehensive Settlement Agreement and Request for Waiver of Response Time and an Unopposed Comprehensive Settlement Agreement (“Settlement Agreement” or “Agreement”). Public Service, Staff, the UCA, CEO, Boulder, Denver, WRA, the Conservation Coalition, SWEEP, EOC, EEBC, CLEER, Climax, and CEC (“Settling Parties”) were signatories to the Settlement Agreement.³ Iconergy took no position on the Agreement.⁴ The ALJ held an evidentiary hearing on the Settlement on August 8, 2024.

6. On August 8, 2024, the Company entered a document indicating that its DSM business programs experienced higher than expected participation and expenditure (“Initial Budgetary Pressure Notice” or “Initial Notice”) and that Public Service paused processing of applications until it could “work with stakeholders on potential alternatives to address the budgetary constraints.”⁵ That document was formally filed in Proceeding No. 22A-0315EG (“2023

² Decision No. R24-0086-I at ¶ 23 (mailed February 12, 2024).

³ Hearing Exhibit 143 at 3.

⁴ Hearing Exhibit 143 at 3.

⁵ Hearing Exhibit 147 at 1-2.

Plan Proceeding”). In the 2023 Plan Proceeding, the Company’s Initial Notice indicated that from January 1, 2024, through June 30, 2024, the Company has spent approximately \$70 million on electric EE, with estimated savings of 401 GWh. With the Company’s current forecasted electric EE trajectory, it could spend approximately \$115.6 million, with estimated savings of 593.5 GWh. However, because this would exceed the Commission’s authorized budget amount by approximately \$22 million, the Company took steps to cease expenditures.⁶

7. The Company filed a Motion to Address Electric Energy Efficiency Budgetary Pressures For Calendar Year 2024, and Request for Waiver or Variance as Necessary (“Budget Motion”) in the 2023 Plan Proceeding. In its Budget Motion, the Company requested the Commission increase the approved budget for the Company’s electric EE offerings to add an additional \$34.1 million to the 2023 electric EE Plan budget of \$92.9 million as applied to calendar year 2024.

8. As discussed in Decision No. C24-0652, issued on September 10, 2024, in the 2023 Plan Proceeding, the Commission denied the Company’s Budget Motion. The Commission found that the instant Proceeding was a more appropriate forum to address the merits of any additional EE budget or any other appropriate solution for 2024.⁷

9. Through Decision No. C24-0650, issued on September 10, 2024, the Commission rescinded the referral of this Proceeding pursuant to § 40-6-109(2), C.R.S. The Commission did so in order to address expeditiously certain ongoing issues with the Company’s current DSM efforts that were raised in Proceeding No. 22A-0315EG. In Decision No. C24-0652, issued in Proceeding No. 22A-0315EG on September 10, 2024, the Commission found that this Proceeding

⁶ *Id.*

⁷ *Id.*

was a more appropriate forum to address the Company's 2024 budget shortfall and that by rescinding the referral, the Commission could more expeditiously towards resolution of the ongoing concerns.

10. On September 17, 2024, the Commission issued Decision No. C24-0671 in which it approved the Settlement Agreement and Application. The Commission also addressed the budgetary shortfalls concerns discussed in the Initial Budgetary Pressure Notice though additional guidance to the Company.

11. On October 8, 2024, the Commission received Public Service's RRR Application. No other party filed an application for RRR.

C. Public Service's RRR Application

12. The Company's RRR Application raises seven discrete issues, each discussed in turn below.

13. Additionally, the Company indicates that it is "now positioned to significantly mitigate the budgetary overage issues identified in the 2024 Budget Motion."⁸ On October 1, 2024, the Company began processing rebate applications for all business programs and offerings except for those for indoor agricultural lighting participants. The Company states that it is first processing applications for business program rebates that the Company received prior to the programming pause.

1. 2023 DSM & BE Plan Budget and Pause on Business Program

14. In paragraph 61 of Commission Decision No. C24-0671, the Commission stated: "we encourage Public Service to remove the pause in its business programs." Later in paragraphs 64 and 65, the Commission stated it directed the Company to exceed its 2024 budget to cover the

⁸ RRR Application, p. 2.

business program budgetary pressures...” and referred to its “directive above to maintain payments to vendors in 2024.”

a. Request

15. Public Service claims the decision language quoted above is “inconsistent” because of the conflict between the verb “encourage” and “direct.”⁹ The Company understands the Commission’s intent to encourage the Company to exercise its management discretion to restart business programs. It claims that its managerial discretion is necessary not only to manage budgets in a prudent manner, consistent with Colorado utility law and precedent, but also to mitigate the potential for negative impacts on the Company’s ability to achieve its energy savings goals. If the Commission chooses not to cure the “internal inconsistency,” Public Service instead requests the Commission elaborate on: “(1) how a directive to restart business programs is consistent with the Company’s managerial discretion to implement its DSM & BE programs, (2) whether the Commission is affording a presumption of prudence for additional spend that could result from such a directive that supersedes Company oversight, and (3) whether and how the Commission will reflect the reduction of the Company’s future abilities to achieve its savings targets in 2025 and 2026 through the Company’s PIMs, which themselves provide the Company with financial signals in how to exercise its managerial discretion.”¹⁰

b. Findings and Conclusions

16. Overall, there is a delicate balance between placing responsibility for the program success on the Company (with respect to both budget maintenance and savings achievement) and giving it discretion to run the programs effectively. We agree with the Company that the

⁹ RRR Application, p. 7.

¹⁰ *Id.* at 9.

highlighted sentences could be read in tension with each other. We therefore amend decision paragraphs 64 and 65 as requested by the Company. The Commission replaces the phrase “directing the Company to exceed its 2024 budget” with “encouraging the Company to exceed its 2024 budget” in paragraph 64 and replaces the phrase “given our directive above” with “given our encouragement above” in paragraph 65 in Decision No. C24-0671. However, the Commission notes that we retain the discretion to directly oversee the Company’s management of the programs when required; nonetheless, we agree that, in this instance, encouragement of the Company’s efforts is an appropriate path forward.

2. Order of Spend Requirement

17. In paragraph 65 of Decision No. C24-0671, the Commission affirmed that the performance incentive mechanism (“PIM”) ordered by Decision No. C23-0413 in Proceeding No. 22A-0309EG, should continue to be applied to Public Service’s electric DSM efforts. It also provided the guidance that “the PIM will apply to the year the investment is paid for. Rebates paid in 2024 will count toward the 2024 savings achieved. Similarly, rebates paid in 2025 or 2026 will count toward the achieved savings in those years, respectively.”¹¹

18. In Proceeding No. 23A-0392EG, in which the Commission established the Company’s 2024-2027 Clean Heat Plan (“CHP”), the Commission ordered that funding for DSM and CHP shall be spend in a certain order.¹² Overall the Commission ordered that existing DSM and BE rebates be immediately augmented by new CHP funding and spending then occur in a specific order.

¹¹ Decision No. C230671, ¶ 65, in Proceeding No. 23A-0589EG.

¹² Proceeding No. 23A-0392EG, Decision No. C24-0397 (“CHP Decision”) at ¶¶ 254, 256, and Decision No. C24-0601 at ¶ 29 (citing and agreeing with the Environmental Organizations interpretation of paragraphs 254 and 256 of Decision No. C24-0397).

a. Request

19. In its RRR Application, Public Service seeks “reconsideration and clarification” regarding the interplay of the Commission’s DSM PIMs and the Commission’s CHP decision. The Company requests reconsideration that the Company may continue to work with stakeholders to fully consider impacts of the Commission’s “order of spend” requirement, with the option to suggest reasonable modifications to either the order of spend requirement or the Company’s PIM structures to avoid negative and unanticipated impacts. Public Service says that it forecasts that the guidance given in the CHP Decision will result in lower energy savings associated with the DSM & BE Plan and will inhibit the Company’s ability to achieve its BE and gas EE incentives under the current PIM structure and vice versa.

20. The Company states that it continues to work with stakeholders on implementation of the Commission’s CHP decision and this 2024-2026 DSM & BE Plan, but seeks reconsideration and clarification to “clearly find that Public Service may propose, after consulting with stakeholders, reasonable modifications to either the order of spend requirement or the Company’s PIM structures to avoid negative and unanticipated impacts from their interaction.”¹³

b. Findings and Conclusions

21. We grant the Company’s request for clarification on whether it may propose, after consultation with stakeholders, modifications to either the Commission’s guidance in the CHP Decision or the Company’s currently-approved PIM mechanisms. We continue to encourage the Company’s stakeholder efforts and reiterate the need for consistent and clear reporting on what budgets are spent to support CHP and DSM efforts and the outcomes those budgets achieve. Incentive structures for both CHP and DSM/BE should be aligned so that the Company cannot

¹³ RRR Application, pp. 11-12.

double-count the savings, or apply them to multiple incentive structures, and so that savings targets are directly associated with base spending levels and not flexibility budgets to as the extent possible. As the Company continues to work with stakeholders to align its CHP and DSM efforts, it may bring proposals for modifications as necessary to the Commission.

3. Procedural Pathway for Future Strategic Issues and DSM Plans

22. In Decision No. C24-0671, the Commission ordered that the Company shall file with its next Strategic Issues filing pursuant to Commission Rule 4761 its “proposed final rebate and program mechanics as it generally would for a DSM plan proceeding” at the same time.”¹⁴ The Commission found that this combined filing approach would be advantageous for Public Service because it would decrease delays in implementing plans that reduce the effectiveness of the Commission’s decisions. The Commission also recognized the interconnectedness of the strategic issues and DSM plan application proceedings and the regulatory efficiency that could result from a combined filing.

a. Request

23. Public Service requests the Commission reconsider the requirement that its next DSM Strategic Issues Application include the information typically found in a DSM plan filing, including final rebate and program mechanics. The Company argues that it is “premature in this proceeding to order the Company to file its proposed final rebate and program mechanics with its next Strategic Issues proceeding.”¹⁵ Public Service compares a combined filing to the development of a shopping list for an unknown meal. The Company raises concerned that a combined filing could actually result in more procedural inefficiencies and suggests that the Commission instead

¹⁴ Decision No. C24-0671, ¶ 72.

¹⁵ RRR Application, p. 12.

encourage the Company to consider providing its final rebate and program mechanics, to the extent it is reasonably able, with its next strategic issues filing, or to provide a narrative explanation as to why it is reasonably unable to provide its final rebate and program mechanics with its next strategic issues filing.

b. Findings and Conclusions

24. We decline to remove the directive that the Company provide information on its proposed rebates and program mechanics as it generally would for a DSM plan proceeding” at the same time as its strategic issues filing. However, we recognize that in the Company’s initial filing, it cannot possibly provide “proposed final rebates” and that final rebate levels can only be established after Commission decision. We therefore remove the word “final” from that sentence found in paragraph 72 of Decision No. C24-0671. We also recognize that the exact cadence and procedural process for a combined filing may require additional Commission guidance and planning closer in time to the anticipated filing. As we stated in Decision No. C24-0671, we plan to evaluate the appropriate cadence for both applications as part of our evaluation of the application overall when filed in 2026, but will entertain or provide additional guidance earlier as necessary.

4. Submission of the GBGB Model

25. In paragraph 69 of Decision No. C24-0671, the Commission ordered that Public Service shall file its “Great Big Great Big” (or “GBGB”) model in conjunction with its next strategic issues filing so that the Commission can have a holistic record to decide the strategic issues and DSM plan issues together.

a. Request

26. The Company requests that the Commission reconsider its directive to require the filing of the GBGB model at the time of the strategic issues filing because it is designed to facilitate

the planning analysis needed to meet the prescribed savings goals within a defined budget as established in a Strategic Issues proceeding, rather than as a tool to establish those savings goals and budgets. The Company also argues that the model includes a substantial amount of data and to have the GBGB expand to the longer horizon of the strategic issues proceeding, it would need to be rebuilt for that purpose.

27. The Company notes that it has already started the stakeholder process for creating a new potential study of the Company's next strategic issues filing and that the new potential study will also provide information on how various incentives such as the Inflation Reduction Act and state and local incentives will impact market participation. The Company argues that the new potential study would be more useful than the GBGB model to the Commission. The Company requests the Commission reconsider its directive ordering the Company to file the GBGB with its next strategic issues proceeding and instead consider modifying that language to allow the Company to address the Commission's desire for additional information in the strategic issues proceeding through ongoing efforts convening stakeholders through the Potential Study Working Group.

b. Findings and Conclusions

28. We continue to find that the Commission's ability to evaluate the program objectives, budgets, and program design details will be aided by having the GBGB model when setting program targets. The GBGB model may be a foundational piece of evidence and potentially critical to understanding how programmatic design interacts with overall targets and budgets. We therefore deny the request to reconsider our directive to file the GBGB model with the Company's next strategic issues filing.

5. Company's Ability to Meet Savings Targets

29. In paragraph 72 of Decision No. C24-0671, the Commission stated that the “actual implementation data from the most recent year available does not immediately support the Settlement’s nearly full use of the flexibility budget or even the Company’s contention that it cannot meet the SI savings target with the Base budget alone” and that based on the 2024 data, “the Company should be able to maintain its cost containment obligations while meeting the savings targets established in the Commission’s SI order so long as the Company can manage down expenditure levels through careful rebate and other program adjustments.”

a. Request

30. Public Service argues that these statements are contrary to the Commission’s decision to approve the Settlement Agreement and embedded proposed budgets and use of budget flexibility. It further argues that the specific and unique circumstances that led to the 2024 budget issues was unlike anything else the Company has experienced in decades of DSM programming and does not constitute an appropriate basis for the Commission to make general conclusions. It states that there is no substantial evidence in the record of this Proceeding that demonstrates that the Company can meet its Commission-approved energy savings targets without using budget flexibility.

b. Findings and Conclusions

31. We did not intend to modify the Settlement Agreement terms applicable here, and acknowledge the Company’s concerns that this unique experience is unlikely to occur again. We therefore modify the language of paragraph 72 in Decision No. C24-0671 slightly to now read:

“Based on this 2024, data, we note that it is possible to maintain the Company’s cost containment obligations while meeting the savings targets established in the Company’s SI order. Going forward, we encourage the Company to balance these

goals while maintaining DSM and BE programs continuity through careful rebate and other program adjustments, as described above, on a best-efforts basis, with cooperation and communication with stakeholders.”

6. Energy Savings Goals Guidance Clarification

32. In paragraph 68 of Decision No. C24-0671, the Commission stated that “the Company should take reasonable steps necessary to stay within both expected average spending rates and targeted savings levels.”

a. Request

33. The Company requests the Commission reconsider the directive that the Company “stay within” the energy savings goals and clarify that it does not intend the Company to be limited to achieving at or less than the Commission’s established energy savings goals and that the Commission does in fact desire the Company “strive to exceed” the approved energy savings targets with the approved budgets and budget flexibility.¹⁶

b. Findings and Conclusions

34. We agree with the Company’s proposed clarification and clarify that the Commission does not intend the Company to be limited to achieving at or less than the Commission’s established energy savings goals and that the Commission does in fact desire the Company “strive to exceed” the approved energy savings targets with the approved budgets and budget flexibility. However, we also add the Company is charged with balancing budget and savings objectives as established by the Commission. If customer demand for DSM or BE services is substantially higher than expected (as was the case presented here regarding the indoor agricultural lighting program offerings), the Company may strive to exceed the approved energy savings targets at the embedded cost efficiency (measured as \$/MWh) approved by the

¹⁶ RRR Application, quoting the Settlement Agreement which requires the Company to strive to achieve beyond the established target. *See* Hr. Ex. 143, Unopposed Comprehensive Settlement Agreement at ¶ 4.

Commission when at all possible. The Commission intends for the Company to make a commercially reasonable best effort attempt to manage its programs with these twin objectives in mind.

7. Proposed Spending and Savings Levels

35. In paragraph 72, the Commission’s decision stated that “the instant application, filed only months after the Commission’s decision in the Strategic Issues proceeding, proposed spending and savings levels contrary to what was set in our SI Order.”¹⁷

a. Request

36. The Company requests that the Commission reconsider of clarify the above statement because it states that “[i]n fact, the Company’s Application proposed spending and savings levels that conformed to the Commission’s Strategic Issues order.”¹⁸

b. Findings and Conclusions

37. In Decision No. C23-0413, the Commission stated that “we will impose a spending cap of \$78 million per year for 2024-2026, to achieve the 440 GWh in savings. We also find it appropriate to institute 20 percent budget flexibility. We note that the goals established above are tied to the base budget of \$78 million established here.”¹⁹ The intent of this flexibility budget was to allow additional funds, if necessary and as circumstances presented, to achieve the savings required in the Commission’s decision in Proceeding No. 22A-0309EG. This understanding was reiterated in the Commission’s decision the Company’s clean heat plan application.²⁰ In this Proceeding, the Company’s application immediately included the flexibility budget before any

¹⁷ Decision No. C24-0671, at ¶ 72.

¹⁸ RRR Application, pp. 19-20.

¹⁹ Decision No. C23-0413, at ¶ 35, in Proceeding No. 22A-0309EG, issued June 22, 2023.

²⁰ See Decision No. C24- 0397, at ¶ 256. (“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.”)

attempt was made to implement the programs with the base budgets alone. While we do not disturb our findings to approve the Settlement Agreement and included budgets and goals, we decline to reconsider our statement found in paragraph 72 of Decision No. C24-0671.

II. ORDER

A. The Commission Orders That:

1. The Application of Public Service Company of Colorado for Rehearing, Reargument, or Reconsideration of Decision No. C24-0671, is denied in part, and granted in part, consistent with the discussion above.

2. The 20-day time period provided by § 40-6-114, C.R.S., to file an Application for Rehearing, Reargument, or Reconsideration, begins on the first day following the effective date of this Decision.

3. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN MEETING AND COMMISSIONERS' WEEKLY MEETING
October 30, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners