

Decision No. R20-0705-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0300E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF WILDFIRE MITIGATION PLAN AND WILDFIRE PROTECTION RIDER.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
VACATING PREHEARING CONFERENCE;
SETTING PROCEDURAL SCHEDULE; SETTING
PUBLIC HEARING; AND REVISING
TIME FOR A COMMISSION DECISION**

Mailed Date: October 2, 2020

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I. STATEMENT

A. Procedural History.

1. On July 17, 2020 at 1:55 p.m., Public Service Company of Colorado (Public Service or Company) filed with the Colorado Public Utilities Commission (Commission), a Verified Application (Application) for approval of its proposed Wildfire Mitigation Plan (WMP) and Wildfire Mitigation Rider (WPR).

2. On July 17, 2020 at 3:51 p.m., the Commission issued a Notice of Application Filed (Notice) establishing deadlines for the filing of intervention pleadings. Interested persons were to file motions to intervene within 30 days, or no later than August 17, 2020.¹ Commission Staff (Staff) had seven additional days to file a notice of intervention of right.

3. The Notice, which was issued less than two hours after the Application was filed, stated that: “At the time of this Notice, [Public Service] **has not** filed testimony and is seeking a Commission decision within 210 days.”² Here the Application was not “accompanied by ... supporting testimony ... together with exhibits,” as required by § 40-6-109(1), C.R.S. (2019), to obtain a Commission decision within 120 days after the application is deemed complete. Instead, Public Service filed the supporting testimony and exhibits later the same afternoon. If supporting testimony and exhibits do not accompany the filed application, § 40-6-109.5(2),

¹ Since the 30-day deadline for interventions, pursuant to the Notice and to Rule 1401 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, fell on Sunday, August 16, 2020, the deadline was extended by operation of law until the next business day, or until Monday, August 17, 2020. Section 40-6-121, C.R.S.

² Notice at 1. (Emphasis in the original.)

C.R.S. (2019), requires the Commission to issue its decision no later than 210 days after the application was deemed complete.³

4. As background for this filing, Public Service states the following. In the wake of major events in California and in response to the growing threat of wildfires in Colorado, Public Service presented its first WMP as part of its 2019 Electric Rate Case, in Proceeding No. 19AL-0268E. Public Service sought rate recovery of incremental distribution capital additions and distribution and transmission operations and maintenance (O&M) associated with its WMP activities. Public Service also requested deferred accounting treatment for its 2020 through 2023 distribution capital and distribution and transmission O&M associated with its WMP above the 2019 incremental O&M levels included in the cost of service. Negotiations in the 2019 Electric Rate Case lead to the Wildfire Settlement Agreement, which was approved by the Commission without modification in Decision No. C20-0096 (issued on February 11, 2020) in Proceeding No. 19AL-0268E. The Wildfire Settlement Agreement provided that Public Service could recover 2019 wildfire mitigation costs (\$5.7 million¹ in 2019 distribution capital additions and \$5 million² in 2019 distribution and transmission O&M) in base rates. Public Service also agreed to file, by August 1, 2020, an application for approval of its comprehensive WMP. Consistent with the Wildfire Settlement Agreement and Decision No. C20-0096, the instant Application is Public Service's updated, comprehensive WMP, as well as its request for approval of the WPR framework to enable Public Service to recover eligible costs associated with its accelerated wildfire mitigation efforts in a timely manner.⁴

³ Section 40-6-109(4), C.R.S., as amended effective on May 30, 2019, in particular cases under extraordinary circumstances and after notice and hearing, allows the Commission to extend the 210-day decision deadline by an additional 130 days, for a total of 250 days. *See* Senate Bill 19-235, Section 16, at page 31; signed into law by Governor Jared S. Polis and effective on May 30, 2019.

⁴ Application, at pages 4 through 6.

5. In the Application, Public Service requests that the Commission: (1) approve the proposed WMP provided in Attachment SLJ-1 to the Application as reasonable and in the public interest; (2) authorize Public Service to implement its proposed WPR consistent with the terms and conditions reflected in the illustrative WPR tariff (Attachment BAT-2); (3) approve the Company's revenue requirement calculation as reflected in Attachment APF-1 (which will be used for the first annual WPR true-up adjustment), and approve the calculated 2021 WPR revenue requirement of \$17,185,038 (contained in Attachment APF-1); (4) authorize the Company to file a compliance advice letter within 20 days of the effective date of a final decision in this proceeding, but on not less than 15 days' notice, with WPR tariff sheets reflecting all terms and conditions that are approved as a result of this proceeding; and (5) authorize Public Service to defer the expenses incurred in connection with this proceeding into a regulatory asset without interest until they are included as expenses in its next Phase I electric rate case.⁵

6. In the late afternoon of July 17, 2020, Public Service filed the supporting testimony and attachments of five witnesses.

7. During the Commission's weekly meeting held on August 26, 2020, the Application was deemed complete for purposes of § 40-6-109.5, C.R.S. (2019), and was referred to an Administrative Law Judge (ALJ) for disposition. Subsequently the undersigned ALJ was assigned to preside over this Proceeding.

8. On September 24, 2020, Public Service filed their Unopposed Motion to Approve Procedural Schedule, Vacate Prehearing Conference and Request Waiver of Response Time.

⁵ Application, at pages 1-2.

II. CORRECTION OF INITIAL RULING AND EXTENSION OF TIME FOR A COMMISSION DECISION

9. In Decision No. R20-0663-I issued September 15, 2020, the undersigned found that since Public Service did not file direct testimony at the exact same time as the Application in the above captioned proceeding that the filing fell under § 40-6-109.5(2), C.R.S. (2019), and the Commission decision must be issued within 210 days.

10. On July 20, 2020, Public Service filed a Statement of Technical Difficulty with the Commission's E-filing System (Statement). In the Statement, Public Service details the difficulty it experienced in making the initial filings in this proceeding

11. After an examination at the intent of Public Service, lack of prejudice to any party and a totality of the circumstances, the undersigned believes that the initial finding was in error and that this proceeding falls under § 40-6-109.5(2), C.R.S. (2019).

12. The testimony was filed within hours of the filing of the Application.

13. No party is prejudiced by a finding that the testimony was filed at the same time as the Application.

14. Looking at a totality of the circumstances including the speed with which the testimony was filed the same day the Application was filed and the difficulties encountered with the e-filing system, it is clear that the Application filing falls under § 40-6-109.5(1), C.R.S. (2019). The record shall be corrected to reflect such a finding.

15. Since the filing falls under § 40-6-109.5(1), C.R.S. (2019), the time for a Commission decision is 120 days after deemed complete or December 24, 2020. If the Commission finds that additional time is necessary for a decision, the date may be extended an additional 130 days.

16. Since the parties' proposed schedule calls for a hearing after the statutory deadline, the undersigned shall extend the time for a Commission decision an additional 130 days or until May 3, 2021.

III. MOTION FOR PROPOSED PROCEDURAL SCHEDULE

17. In their Unopposed Motion, Public Service states the parties have agreed to the following procedural schedule:

Public Comment Hearing	October 28, 2020
Answer Testimony & Exhibits	November 20, 2020
Rebuttal/Cross Answer Testimony & Exhibits	December 18, 2020
Stipulations & Settlement Agreements	January 8, 2021
Deadline for Corrected Testimony	January 11, 2021
Pre-hearing Motions	January 11, 2021
Witness Order & Estimated Cross Time	January 11, 2021
Evidentiary Hearing	January 14-15, 2021
Statements of Position	January 29, 2021

18. The parties also agree to the following discovery procedures:

a) First, discovery requests and responses will be served electronically. This modification is appropriate because it will maximize the amount of time Parties are able to respond to discovery and will promote efficiency and cost savings.

b) Second, all responses to an individual set of discovery shall be served in a single, combined document to all Parties. In the event that responses to an individual set of discovery are not served simultaneously, Parties agree to provide all Parties with all available responses served on a given day in a single, combined document, and Parties also agree to provide a single, combined document including all responses to an individual set of discovery. This modification is appropriate because it will promote efficiency, as it is less

time-consuming for Parties to open one document versus multiple documents when reviewing responses.

c) Third, all highly confidential and confidential documents and discovery responses (and any requests containing confidential or highly confidential information) will be served only on Parties that have executed the appropriate non-disclosure agreements, and all non-confidential requests and responses will be served on all Parties. This modification is appropriate because it will promote efficiency by minimizing duplicative discovery requests.

19. Except for the modifications proposed above, 4 CCR 723-1-1405 (as modified on May 19, 2020 by Decision No. C20-0375 in Proceeding No. 19R-0483ALL) will govern discovery in this proceeding, including discovery requests, data requests, and Staff audit requests.

20. The Parties also agree that 4 CCR 723-1-1100 and 723-1-1101 (as modified by Decision No. C20-0375 in Proceeding No. 19R-0483ALL) will govern the treatment of confidential information (*i.e.*, information claimed to be confidential) and information for which extraordinary protection is sought.

21. The proposed procedural schedule and discovery procedures are acceptable and good cause is found for its adoption.

IV. PUBLIC HEARING

22. The ALJ finds that, given the uncertainty which the novel coronavirus (COVID-19) pandemic creates on future public gatherings, it is in the best interests of the parties and Commission personnel to hold the public comment hearing remotely and that doing so is consistent with emergency declarations and public health advisories to prevent the spread of COVID-19. Therefore, the ALJ will order that the public comment hearing be held remotely by video conference.

23. The Commission prefers written comments over oral comments. As a result, interested persons are encouraged to submit written comments through either: (a) the Commission's Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding; or (b) the Commission's website at <https://puc.colorado.gov/> by clicking on the "FILE A COMMENT OR COMPLAINT" link. Both oral and written comments will be given the same weight in this proceeding.

24. For those individuals who want to provide oral comments, the Commission will use the web-hosted video conferencing service, GoToMeeting, to hold video conferences, and in this case, a remote public comment hearing. Video-conference participation allows for oral comments to be presented in a manner most similar to that which occurs during in-person hearings. Individuals who wish to provide oral comments during the public comment hearing can participate and provide their comments either by telephone or computer. Attachment A to this Decision sets forth general instructions and requirements for how to participate by telephone or by computer. These requirements are intended to ensure that the remote hearing proceeds efficiently without technical problems. Attachment A includes important requirements and technical information on participating in the hearing through GoToMeeting. Hence, it is vitally important that Participants and counsel carefully review and follow all requirements in this Decision and Attachment A.

25. **To Participate by Telephone.** Any member of the public or party who wishes to provide comments by telephone during the remote public comment hearing must call +1 408 650-3123 when the hearing takes place. When prompted, input the pin 497-278-029. You will then be placed into the public comment hearing. Please note that your session and

participation will be controlled by the ALJ/Commission Staff. When you are not speaking, please mute your telephone.

26. **To Participate by Computer.** Any member of the public or Participant who wishes to participate in the public comment hearing by computer must use a computer that is connected to the internet and has a microphone and a speaker. At the time of the hearing, please go to <https://global.gotomeeting.com/join/497278029>. When you are not speaking, please mute your microphone. Attachment A contains detailed instructions for participating in the hearing using GoToMeeting.

27. The ALJ anticipates that the hearing will be webcast, consistent with Commission practice. This means that those persons wishing to observe the hearing may do so without needing to join the hearing online. Please use the audio or video connection for Hearing Room A found at <https://puc.colorado.gov/webcasts>

V. **REMOTE HEARING**

28. On March 10, 2020, Colorado Governor Jared Polis declared a state of emergency over the COVID-19. Since then, Colorado State government and the Commission have been working diligently to address how to safely and effectively manage the challenges presented by COVID-19. These efforts have focused on limiting the disruption to the services delivered by the Commission (and other State agencies), while attempting to mitigate the risks to State employees and the public. For example, the Commission has been conducting its Weekly Meetings remotely, and the Commission has asked members of the public not to attend meetings in person, but to view them by webcast. Finally, public access to the building containing the Commission's offices and hearing rooms has been restricted and it is unclear when the restriction will be lifted.

29. Under these circumstances, the hearing scheduled for January 14 and 15, 2021 shall be converted into a remote hearing in which the participants will appear from remote locations, as provided below. The ALJ finds that holding a remote hearing is consistent with current public health advisories to prevent the spread of COVID-19. The ALJ concludes that it is in the parties' and the public interest to hold the hearing in this proceeding as a remote hearing.⁶

A. Instructions for Participating in Remote Hearing

30. Attachment A to this Decision provides the requirements and information addressing how to use the GoToMeeting platform for participating in the hearing.

31. Parties must follow the procedures for exhibits contained in Attachment B to this Decision.

VI. ORDER

A. It Is Ordered That:

1. The prehearing conference scheduled for September 29, 2020 shall be vacated.
2. The previous ruling that the above captioned proceeding falls under § 40-6-109.5(2), C.R.S. (2019), is rescinded.
3. The above captioned proceeding is found to fall under § 40-6-109.5(1), C.R.S. (2019).
4. The time for a Commission decision shall be extended for an additional 130 days or until May 3, 2021. § 40-6-109.5(1), C.R.S. (2019)

⁶ If conditions change and the restrictions are lifted, the hearing may revert back to an in person hearing.

5. An evidentiary hearing in this matter is scheduled for the following date, at the following time, and in the following location:

DATES: January 14 and 15, 2021

TIME: 9:00 a.m.

PLACE: By video conference using GoToMeetings at link provided to parties by email

5. A remote public comment hearing is scheduled for:

DATE: October 28, 2020

TIME: 4:00 p.m. until it is concluded

PLACE: By video conference using GoToMeetings at link provided to parties by email

Members of the public who wish to participate in and/or to provide oral comments at the remote public comment hearing, must follow the instructions stated above in this Interim Decision and in Attachment A.

6. The procedural schedule as stated above is adopted.

7. Attachment A is incorporated into this Decision.

8. Attachment B is incorporated into this Decision

9. This Decision is effective immediately.

S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director