

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0243E

IN THE MATTER OF ADVICE LETTER NO. 1923 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO PLACE INTO EFFECT REVISED BASE RATES AND OTHER AFFECTED CHARGES FOR ALL ELECTRIC RATE SCHEDULES BY ELIMINATING THE GENERAL RATE SCHEDULE ADJUSTMENT (GRSA) AND GENERAL RATE SCHEDULE ADJUSTMENT - ENERGY (GRSA-E) AS WILL BE ESTABLISHED BY THE COMMISSION IN PROCEEDING NO. 22AL-0530E, TO INITIATE TIME-DIFFERENTIATED GENERATION AND TRANSMISSION DEMAND CHARGES FOR SECONDARY GENERAL SERVICE (SCHEDULE SG) AND SECONDARY GENERAL CRITICAL PEAK PRICING SERVICE (SCHEDULE SG-CPP), TO INTRODUCE NEW ELECTRIC VEHICLE RATE OPTIONS FOR CUSTOMERS TAKING SERVICE AT THE PRIMARY DISTRIBUTION LEVEL, TO ADJUST THE PRIMARY GENERAL CRITICAL PEAK PRICING AND SECONDARY PHOTOVOLTAIC TIME-OF-USE SERVICE SECTION TIME-DIFFERENTIATED DEMAND CHARGES, TO MAKE SEVERAL ADMINISTRATIVE REVISIONS, AND TO RECEIVE APPROVAL OF DEFERRED ACCOUNTING TREATMENT FOR RATE CASE EXPENSES, TO BECOME EFFECTIVE JUNE 15, 2023.

**INTERIM COMMISSION DECISION GRANTING
REQUESTS FOR INTERVENTION, GRANTING MOTIONS
FOR PRO HAC VICE APPEARANCE, AND ADDRESSING
THE DEVELOPMENT OF A PROCEDURAL SCHEDULE**

Mailed Date: July 24, 2023

Adopted Date: July 19, 2023

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I. BY THE COMMISSION

A. Statement

1. On May 15, 2023, Public Service filed Advice Letter No. 1923-Electric (AL-1923) with tariff sheets setting forth its base rates for retail electric utility service. Through this Phase II proceeding, Public Service proposes to eliminate the General Rate Schedule Adjustment (GRSA) and General Rate Schedule Adjustment – Energy (GRSA-E) to be set by the Commission in the Company's current 2022 Phase I Rate Case (Proceeding No. 22AL-0530E) and establish new base rates and other affected charges in the Company's Electric Tariff.

2. By Decision No. C23-0373, issued on June 5, 2023, the Commission set for hearing and suspended the effective date of the tariff sheets filed with AL 1923 for 120 days pursuant to § 40-6-111(1), C.R.S. The decision also established a notice and intervention period ending on June 30, 2023.

3. This Decision grants the motions for intervention in this matter and grants the motions for *pro hac vice* appearance. We direct Public Service to confer with the intervening parties to develop and file a proposed procedural schedule (with discovery parameters) by August 4, 2023, consistent with the guidelines for the evidentiary hearing set forth below.

B. Interventions and Parties to the Proceeding

4. Trial Staff of the Colorado Public Utilities Commission (Staff) and the Colorado Office of the Utility Consumer Advocates (UCA) filed timely notices of intervention by right. UCA represents the public interest and specific interests of residential, small business, and

agricultural customers under § 40-6.5-104, C.R.S. Staff and UCA detail several issues they plan to address, and both Staff and UCA request a hearing.

5. Pursuant to Rule 4 Code of Colorado Regulations (CCR) 723-1-1401(b) of the Commission's Rules of Practice and Procedure, no decision is required in response to appropriately filed notices of intervention by right. We acknowledge the notices of intervention of right, and that Staff and UCA are parties to this Proceeding.

6. The following parties filed timely requests for permissive intervention: the Colorado Energy Consumers Group (CEC)¹, Climax Molybdenum Company, Kroger, the Federal Executive Agencies (FEA), Molson Coors, Walmart, Southwest Energy Efficiency Project (SWEEP), Energy Outreach Colorado (EOC), COSSA/SEIA, Western Resource Advocates (WRA), and the cities of Denver and Boulder. We highlight some of the varied interests represented by these organizations below.

7. CEC is an unincorporated association comprised of large industrial and commercial energy consumers. All of CEC's members operate facilities within Public Service's service territory and purchase electricity and related energy services from the Company. CEC maintains that no party or putative intervenor could adequately represent CEC's interests due to the unique service requirements and characteristics of each CEC member, and of CEC as a group, and therefore CEC's interests cannot be adequately represented by any other party in this Proceeding.

¹ CEC members include: AirGas, USA, LLC, All Recycling, Inc., the Colorado Hotel & Lodging Association ("CHLA"), Lockheed Martin Corporation, Occidental Energy Ventures, Suncor Energy (U.S.A.) Inc., Western Midstream, and Google, Inc.

8. Climax operates mines near Leadville and Empire, Colorado and receives electric service from Public Service under schedule Transmission General. Climax is one of Public Service's largest electric customers. In this Proceeding, Climax intends to examine whether the proposed method for allocating demand-related costs among customer classes is more accurate than the current allocation method. Climax states that, as one of Public Service's largest electric customers, its interests would not be adequately represented unless Climax is allowed to intervene in this Proceeding.

9. Kroger is a corporation engaged in the business of selling groceries at retail throughout the United States. One of the largest retail food companies in the United States, Kroger operates approximately 110 grocery stores in the state of Colorado through its King Soopers and City Market divisions. Kroger is a retail electric customer of Public Service. It has approximately 90 grocery stores and other facilities that purchase their electric supply from Public Service. Kroger states it intends to determine whether the class allocation and rate design proposed by Public Service is just and reasonable. Kroger maintains that its unique load characteristics means its interests are not adequately represented by any other party in this Proceeding.

10. FEA consists of federal agencies which have offices, facilities, and/or installations in Public Service's service area such as Buckley Space Force Base. FEA states that it expects its electric bills at these locations to be substantially impacted by the outcome of this Proceeding. FEA indicates that it may present testimony on whether the proposed class allocation result in rates that are just and reasonable. FEA notes that there is no other entity authorized by federal statute to represent FEA in this Proceeding.

11. Molson Coors operates its brewery and associated fabrication facilities in Jefferson County, Colorado. Molson Coors receives electric service from Public Service at its facilities in several different customer classes, including as a primary general standby customer, and operates its own natural gas fired turbines in addition to receiving electric service from Public Service. Molson Coors contends, as a primary general standby level customer and as a customer in other commercial classes in the proposed tariff, its unique interests will not be protected unless it is permitted to intervene in this Proceeding.

12. As a large customer of Public Service, Walmart operates 105 retail units, two distribution centers, and employs over 29,000 associates in Colorado. Collectively, these facilities consume over 147 million kWh of electricity on an annual basis, primarily in the Secondary General service class. Electricity is one of Walmart's largest costs of doing business in Colorado. Walmart indicates that, as a large commercial customer, its interests differ from those of other participants in this Proceeding. As a large commercial customer with multiple accounts and multiple facilities, Walmart contends its interests cannot be adequately represented by any other participant in this Proceeding.

13. SWEEP is a regional public interest non-profit organization whose mission is to advance energy efficiency and clean transportation, and to expand the economic and environmental benefits that energy efficiency and electric vehicles provide. The organization has more than thirty formal Business Allies, many of which are based or operate in Colorado. SWEEP contends that the Commission's decision whether to approve new EV rate options for C&I Primary customers—and the specific details of these rates—will affect the economics and pace of EV adoption for vehicle fleet owners and large industrial customers. It also notes that as a non-profit organization that is uniquely focused on advancing energy efficiency, demand

response, beneficial electrification, and transportation electrification, its interests are separate and distinct from other parties.

14. Energy Outreach Colorado's mission is to ensure that to ensure that income-qualified Colorado households can meet their home energy needs. Pursuant to C.R.S. § 40-8.5-104 and § 40-8.7-104, EOC collects and disburses low-income energy assistance funds. It points out that it has a vested interest in assuring that the interests of income-qualified customers of Colorado utilities are duly recognized in proceedings before the Commission, and in ensuring that rates are just and reasonable such that the organization is not burdened by having to increase assistance payments and other crisis mitigation disbursements.

15. COSSA is a nonprofit trade association membership is comprised of approximately 280 solar- and storage-related businesses and advocates representing thousands of Colorado employees, including solar electric, solar thermal, and energy storage contractors, many of whom operate in Public Service's franchised service territory. SEIA is the national trade association for the U.S. solar energy industry. These organizations state that Public Service's proposals for a new cost allocation methodology, time differentiated demand charges for large commercial customers, increased customer charges, and other tariff and rate design modifications will directly impact the attractiveness of COSSA and SEIA member products and services.

16. WRA is a non-profit conservation organization dedicated to protecting the land, air, and water of the West in order to ensure that communities exist in balance with nature, with a vision of a prosperous economy that is not dependent on fossil-fueled electricity generation. It states that this proceeding will impact the tangible interests WRA represents, specifically environmental protection through reduction of carbon dioxide emissions in the state

of Colorado. WRA contends that it is unique, and therefore no other party will adequately represent its interests in this proceeding.

17. Denver purchases electricity from Public Service, as do its residents and businesses. In 2022, Denver's municipal buildings accounted for approximately 102 GWh of electricity consumption at a cost of about \$10.5 million. Denver seeks to intervene to understand the impact of Public Service's proposals on Denver, Denver's ratepayers, and Denver-owned facilities. Denver also seeks to explore Public Service's proposed modifications to Secondary General demand charges, Time-of-Use Study, and new EV rate option. Denver notes that these interests are not adequately represented by any other party in this Proceeding, and that its interests are different from other municipalities and local government entities.

18. Boulder is a large customer of Public Service that operates facilities which take service under Public Service rate schedules Small Commercial, Secondary General, Primary General, Street Lights, and Non-Metered Street Lights. Boulder states that the Boulder Climate Commitment targets a 70 percent reduction in economy-wide greenhouse gas emissions by 2030 versus a 2018 baseline and economy-wide carbon neutrality by 2035. Boulder further states, the issues discussed in this Proceeding may change the rates and total bills paid by the City of Boulder and by Boulder customers, which in turn, affects energy affordability as well as the economics of conservation, energy efficiency, and distributed energy resource investments made by the city, residents, and businesses. Boulder indicates it has pecuniary and tangible interests that may be substantially affected by the outcome of the Proceeding and that are not adequately represented by any other party.

19. Rule 4 CCR 723-1-1401(c) of the Commission's Rules of Practice and Procedure sets forth the standard for permissive intervention and states, in relevant part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.

20. Further, Rule 4 CCR 723-1-1401(c) requires that a movant who is a “residential consumer, agricultural consumer, or small business consumer” must discuss in the motion whether the distinct interest of the consumer is either not adequately represented by the UCA or inconsistent with other classes of consumers represented by the UCA. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., the UCA has a statutory mandate to represent the interest of the Company's residential small business, and agricultural customers in Colorado.

21. We find that each entity seeking permissive intervention has sufficiently demonstrated that this Proceeding may substantially affect its pecuniary or tangible interests, as is required by Rule 1401(c). Each also has demonstrated that its interests would not otherwise be adequately represented. Therefore, we grant the requests for permissive intervention.

C. Requests for *Pro Hac Vice* Appearance

22. An attorney who is not licensed to practice law in Colorado must be granted permission to appear pro hac vice in a Commission proceeding. Rule 1201(a) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, governs the admission of out-of-state attorneys. Rule 1201(a) requires compliance with Colorado Rule of Civil Procedure (CRCP) 205.4, which itself expressly incorporates CRCP 205.3. As pertinent here,

CRCP 205.3(2)(a) details what an out-of-state attorney must do to be permitted to appear *pro hac vice* and includes these requirements:

- a) File a verified motion with the [administrative agency] requesting permission to appear;
- b) Designate an associated attorney who is admitted and licensed to practice law in Colorado;
- c) File a copy of the verified motion with the Clerk of the Supreme Court Office of Attorney Registration at the same time the verified motion is filed with the [administrative agency];
- d) Pay the required fee to the Clerk of the Supreme Court collected by the Office of Attorney Registration; and
- e) Obtain permission from the [administrative agency] for such appearance.

23. Kurt J. Boehm on behalf of Kroger and George Cavros on behalf of Western Resource Advocates have moved for *pro hac vice* admission. After reviewing the verified motions, and certificates of good standing filed by the Attorney Registration Office, we find each has met the above requirements and therefore grant the motions.

24. Thomas Jernigan, and Captain Marcus Duffy on behalf of the FEA have moved for *pro hac vice* admission. They have also asked to excuse associated local counsel. Having reviewed the verified motions and certificate of good standing, we will grant their motions for admission and their request to excuse associated local counsel.

D. Response Time to Motion for Extraordinary Protection

25. On May 15, 2023, Public Service filed a motion for a protective order affording extraordinary protection for highly confidential customer information with Advice Letter No. 1923-Electric

26. Responses to the motion shall be filed no later than seven days after the Mailed Date of this Decision.

E. Procedural Schedule

27. We direct Public Service to confer with the intervening parties to develop and propose a consensus procedural schedule including discovery procedures. Public Service shall file either a conferral report describing the efforts to reach consensus on a proposed procedural schedule or a motion to approve a proposed procedural schedule no later than August 4, 2023. Parties should consider and include a deadline for filing of Supplemental Direct Testimony. We direct Public Service and the parties to set the deadline for filing any settlement agreement to ensure that the Commission receives the terms of the settlement agreement and any supporting testimony no less than two weeks prior to the start of the evidentiary hearing.

28. The procedural schedule proposed by the parties should include an evidentiary hearing in December before the Commission *en banc*.

II. ORDER

A. The Commission Orders That:

1. The Motion to Intervene filed on June 7, 2023, by Colorado Energy Consumers Group is granted.

2. The Motion to Intervene filed on June 20, 2023, by Energy Outreach Colorado is granted.

3. The Motion to Intervene filed on June 21, 2023, by The Kroger Company is granted. The Motion for *Pro Hac Vice* Admission of Kurt J. Boehm filed by The Kroger Company on June 21, 2023, is granted.

4. The Motion to Intervene filed on June 22, 2023, by Colorado Solar and Storage Association and the Solar Energy Industries Association is granted.

5. The Motion to Intervene filed on June 23, 2023, by Federal Executive Agencies is granted. The Motions to Appear *Pro Hac Vice* and the Motion to Excuse the Attendance of Associated Counsel contained within the same motion are granted.

6. The Motion to Intervene filed on June 28, 2023, by Walmart, Inc. is granted.

7. The Motion to Intervene filed on June 28, 2023, by Molson Coors Beverage Company is granted.

8. The Motion to Intervene filed on June 29, 2023, by Southwest Energy Efficiency Project is granted.

9. The Motion to Intervene filed on June 29, 2023, by the City and County of Denver is granted.

10. The Motion to Intervene filed on June 30, 2023, by the City of Boulder is granted.

11. The Motion to Intervene filed on June 30, 2023, by Climax Molybdenum Company is granted.

12. The Motion to Intervene filed on June 30, 2023, by Western Resource Advocates is granted. The Motion for *Pro Hac Vice* Admission of George Cavros filed by Western Resource Advocates on June 30, 2023, is granted.

13. The parties to this Proceeding are Public Service, Trial Staff of the Colorado Public Utilities Commission, the Colorado Office of the Utility Consumer Advocate, Colorado Energy Consumers Group, Climax Molybdenum Company, Kroger, the Federal Executive

Agencies, Molson Coors, Walmart, Southwest Energy Efficiency Project, Energy Outreach Colorado, COSSA/SEIA, Western Resource Advocates, and the cities of Denver and Boulder.

14. Public Service is directed to confer with the parties to develop a proposed procedural schedule, consistent with the discussion above. Public Service shall file a report addressing its conferral with the parties regarding a procedural schedule or a motion to approve a consensus procedural schedule no later than August 4, 2023.

15. Responses to the Motion for Extraordinary Protection filed by Public Service on May 15, 2023 shall be filed no later than seven days after the Mailed Date of this Decision.

16. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 19, 2023.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners