

Decision No. C23-0685-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0392EG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS 2024-2028 CLEAN HEAT PLAN.

**INTERIM COMMISSION DECISION ADDRESSING
MOTION FOR LEAVE TO REPLY AND MOTION TO
PARTICIPATE AS AN AMICUS CURIAE**

Mailed Date: October 12, 2023

Adopted Date: October 11, 2023

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the Motion of the Air Pollution Control Division to participate as an Amicus (APCD Amicus Motion) filed by the Air Pollution Control Division (APCD) on September 20, 2023.

2. The Commission also sets October 13, 2023, pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1400(b) of the Commission's Rules of Practice and Procedure, as the deadline for responses to the Motion for Leave to Reply filed by City of Boulder, Colorado Renewable Energy Society, Colorado Solar and Storage Association, Natural Resources Defense Council, Physicians for Social Responsibility Colorado, Sierra Club, Solar Energy Industries Association, Southwest Energy Efficiency Project, Utility Consumer Advocate, and Western Resource Advocates (together, Joint Movants) on October 3, 2023 (Joint Movants Motion for Leave to Reply).

B. Background

3. On August 1, 2023, Public Service Company filed its Clean Heat Plan Application which requests the Commission approve the Company's 2024-2028 Clean Heat Plan (Application).

4. By Decision No. C23-0626, the Commission granted requests for permissive intervention filed by the City and County of Denver (Denver), the City of Boulder (Boulder), City of Pueblo, County of Pueblo, Project Canary, PBC (Project Canary), the Colorado Energy Consumers (CEC), Holy Cross Electric Association, Inc. (Holy Cross), Black Hills Colorado Gas, Inc. (Black Hills), Natural Resources Defense Council and Sierra Club (collectively, the Conservation Coalition), the Colorado Renewable Energy Society (CRES) and Physicians for Social Responsibility (PSR-CO), Western Resource Advocates (WRA), the Southwest Energy Efficiency Project (SWEEP), Energy Outreach Colorado (EOC), the Colorado Solar and Storage Association (COSSA) and the Solar Energy Industries Association (SEIA), Chevron, Occidental Petroleum, and Williams (collectively, the Decarbonization Coalition), Denver Pipefitters, Local 208 (Pipefitters), and Laborers' International Union of North America, Local 720 (Local 720). The Commission acknowledged the notices of intervention of right filed by Trial Staff of the Commission (Staff), the Office of the Utility Consumer Advocate (UCA), and the Colorado Energy Office (CEO).

5. Also by Decision No. C23-0626, the Commission ordered Public Service to address numerous topics through supplemental direct testimony. The Commission set October 10, 2023 as the deadline for supplemental direct testimony.

6. On September 6, 2023, the Joint Movants filed their Joint Motion for Partial Summary Judgement (Partial Summary Judgment Motion).

7. On September 20, 2023, the APCD moved for leave to participate as an amicus curiae pursuant to Rule 4 CCR 723-1-1200(c) of the Commission's Rules of Practice and Procedure.

8. On September 27, 2023, responses to the Partial Summary Judgment Motion were filed by Public Service (Public Service Response); (2) Colorado Decarbonization Coalition, the City of Pueblo, the County of Pueblo, Pipefitters, Local 208, and Project Canary (Pueblo et al. Response); (3) Denver (Denver Response); and (4) CEO and APCD (CEO/APCD Response).

9. On October 3, 2023, the Joint Movants filed their Motion for Leave to Reply.

C. Findings and Conclusions

1. APCD Amicus Motion

10. On September 20, 2023, APCD, which is housed within the Colorado Department of Public Health and Environment, moved for leave to participate as an amicus curiae pursuant to Rule 4 CCR 723-1-1200(c) of the Commission's Rules of Practice and Procedure. APCD serves as staff to the Air Quality Control Commission. No responses were filed to APCD's motion.

11. As grounds for its Motion, the Division states that both its general statutory mission and the specific statutory duties given to the Division in Senate Bill 21-264 are grounds for granting APCD amicus status in this Proceeding. The Division states that it has an interest in this Proceeding because the Application's inclusion of certified natural gas and offsets and proposal to alter the Clean Heat Emissions Calculation Workbook directly concerns the Division's mission to prevent double-counting of greenhouse gas emission reductions and to ensure clean heat resources reduce carbon emissions from the combustion of gas in customer end uses, as well as the Division's overall mission to achieve statewide greenhouse gas emission reduction goals.

12. The Division's says its participation as an amicus will not broaden the issues and it will only present legal arguments. The Division also notes that the Commission should grant this motion because the Division has statutory authority to participate as a party in "any proceeding before the commission in which a gas distribution utility is seeking approval of a clean heat plan," which logically includes the lesser-included right to appear in the more limited role as amicus for the sole purpose of filing briefs on narrow issues of law.¹

13. Rule 1200(c) provides for a non-party desiring to assist the Commission in arriving at a just and reasonable determination of a proceeding to participate as amicus curiae. Amicus curiae are not a party, and may present legal argument only, as permitted by the Commission.

14. We find good cause to grant the APCD's Motion for participation as an amicus. The Division has met the requirements of Rule 4 CCR 723-1-1200(c) of the Commission's Rules of Practice and Procedure and further has the ability to participate in this Proceeding pursuant to § 40-3.2-108(4)(g)(II), C.R.S.

2. Joint Movants Motion for Leave to Reply

15. On October 3, 2023, the Joint Movants filed a motion for leave to respond pursuant to Rule 4 CCR 723-1-1400(e) of the Commission's Rules of Practice and Procedure. The Commission may grant leave to file a reply pursuant to Rule 1400(e)(I) & (IV) if the movants demonstrate "a material misrepresentation of a fact" or "an incorrect statement or error of law." They argue that in the context of responses to a summary judgment motion, a misrepresentation of the motion's legal arguments should be considered to be material, given that the summary judgment standard is whether the movant is entitled to judgment as a matter of law. The argue that

¹ APCD Amicus Motion, pp. 4-5, citing § 40-3.2-108(4)(g)(II), C.R.S.

statements in the Public Service Response and the Pueblo et al Response justify an opportunity to reply pursuant to Rule 4 CCR 723-1-1400(e)(IV) of the Commission's Rules of Practice and Procedure).

16. The Joint Movants state that their Motion is opposed by several parties, including Public Service, the Decarbonization Coalition, Black Hills, the City of Pueblo, Pueblo County, Pipefitters, and Project Canary. Several parties reserved their right to respond.

17. Pursuant to Commission Rule 4 CCR 723-1-1400(b) of the Commission's Rules of Practice and Procedure, response time would typically run until October 17, 2023 to this Motion. We, on our own motion, shorten response time to the Joint Movants' Motion for Leave to Reply until October 13, 2023. We find good cause to shorten response time so that the Commission can fully consider any responses before the October 18, 2023 Commissioners' Weekly Meeting.

II. **ORDER**

A. **It Is Ordered That:**

1. The Commission grants the Motion of the Air Pollution Control Division to participate as an Amicus filed by the Air Pollution Control Division (APCD) on September 20, 2023.

2. The Commission sets October 13, 2023, pursuant to Rule 4 *Code of Colorado Regulations* 723-1-1400(b) of the Commission's Rules of Practice and Procedure, as the deadline for responses to the Motion for Leave to Reply filed by City of Boulder, Colorado Renewable Energy Society, Colorado Solar and Storage Association, Natural Resources Defense Council, Physicians for Social Responsibility Colorado, Sierra Club, Solar Energy Industries Association, Southwest Energy Efficiency Project, Utility Consumer Advocate, and Western Resource Advocates on October 3, 2023.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 11, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners