

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0555E

IN THE MATTER OF ADVICE LETTER NO. 1912 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO ALLOW THE COMPANY TO PASS THROUGH COSTS FROM THE MONETIZATION OF PRODUCTION TAX CREDITS ASSOCIATED WITH THE RUSH CREEK WIND PROJECT AND THE CHEYENNE RIDGE WIND PROJECT TO BE PASSED THROUGH THE ELECTRIC COMMODITY ADJUSTMENT, TO BECOME EFFECTIVE JANUARY 14, 2023.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
GRANTING MOTION TO AMEND ADVICE LETTER
AND TARIFF SHEETS, GRANTING MOTION FOR
ALTERNATIVE FORM OF NOTICE, AND LIFTING THE
SUSPENSION OF TARIFF**

Mailed Date: May 11, 2023

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I. STATEMENT**A. Summary**

1. By this Decision, the undersigned ALJ grants Public Service Company of Colorado's (Public Service or the Company) request to amend its Advice Letter No. 1912, grants its request for alternative form of notice, and lifts the suspension of proposed effective date ordered by the Commission in Decision No. C23-0030, issued January 12, 2023.

B. Procedural Background

2. On December 15, 2022, Public Service Company of Colorado (Public Service or the Company) filed Advice Letter No. 1912 - Electric with tariff sheets for its Electric Commodity Adjustment (ECA), seeking to modify its ECA tariff sheets to accommodate transaction costs associated with the monetization of Production Tax Credits (PTCs) associated with the Company's Rush Creek Wind Project and Cheyenne Ridge Wind Project. In the Advice Letter, Public Service stated that the change in the ECA tariff is needed to bring the benefits of the tax credit transferability provision of the Inflation Reduction Act of 2022 (IRA) to customers.

3. By Decision No. C23-0030 mailed on January 12, 2023, the Commission suspended the effective date of Public Service's Advice Letter for 120 days, or up to and including May 15, 2023. The Commission also ordered that any Interventions be filed within 30 days, or on or before February 10, 2023. Finally, the Commission referred the matter to an Administrative Law Judge (ALJ) for disposition.

4. The Colorado Office of the Utility Consumer Advocate (UCA) filed its Notice of Intervention as a Matter of Right on January 26, 2023. Commission Staff filed a Notice of Intervention as of Right on February 8, 2023.

5. The Company, UCA, and Commission Staff are thus the parties to this Proceeding.

6. By Decision No. R23-0165-I, issued March 7, 2023, the undersigned ALJ further extended the suspension an additional 130 days, up to and including September 22, 2023. *See* § 40-6-111(1)(b), C.R.S. Decision No. R23-0165-I also set a procedural schedule for this Proceeding and scheduled an evidentiary hearing to commence on June 1, 2023.

7. On April 5, 2023, Public Service filed a Notice of Resolution in Principle and Request for Extension of Answer Testimony Due Date. The undersigned ALJ granted the unopposed request for extension of the deadline to file answer testimony on April 7, 2023, in Decision No. R23-0237-I.

8. On April 14, 2023, Public Service moved for leave to amend its Advice Letter pursuant to Rule 1309(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. It indicated that the motion was unopposed.

9. With its motion, it also filed its Second Amended Advice Letter No. 1912. The Second Amended Advice Letter No. 1912 proposed including the PTC Performance Incentive Mechanism (PIM) in the ECA Tariff. In the Second Amended Advice Letter, the Company noted that its “share of the PTC PIM that was awarded from the prior year would be included in the Quarterly ECA Revenue Requirement.” In addition, “the ECA Tariff would also change to allow the transaction costs from the monetization of PTCs associated with the Rush Creek Wind Project (‘Rush Creek’) and the Cheyenne Ridge Wind Project (‘Cheyenne Ridge’) to be passed through the ECA.”

10. On April 14, 2023, the Company also filed a Motion for Commission Approval of an Alternative Form of Notice, pursuant to Rule 1207(b), 4 CCR 723-1. Specifically, Public

Service requested permission to post legal notice of the Second Amended Advice Letter No. 1912 filed contemporaneously with the motion “on the Company’s public website,” which would be kept open for public inspection in accordance with § 40-3-104(1)(c)(I), C.R.S., and to notify all parties to Proceeding Nos. 21AL-0317E and 22A-0345E about the Advice Letter via electronic service.

11. On April 14, 2023, UCA and Commission Staff withdrew their respective Interventions. Consequently, Advice Letter No. 1912, as now amended, is unopposed.

II. MOTION TO AMEND

12. On April 14, 2023, Public Service filed an unopposed Motion for Leave to Amend its Advice Letter pursuant to Rule 1309(a), accompanied by its Second Amended Advice Letter. With the Motion, Public Services also filed clean and red-lined copies of its amended Tariff Sheets which reflected amendments agreed to by UCA and Commission Staff.

13. In the Motion for Leave to Amend, Public Service represented that it had conferred with UCA and Commission Staff about the Motion for Leave to Amend, and that neither UCA nor Commission Staff opposed the motion.

14. After the notice or intervention period has expired, a party may amend a pleading may be amended with leave of the Commission. Rule 1309(a), 4 CCR 723-1. Unless the amendment is more restrictive, new notice must be provided consistent with Rule 1207, 4 CCR 723-1. Public Service states in its Motion for Leave to Amend that it “will provide new notice.” As addressed below, contemporaneous with its Motion for Leave to Amend, Public Service moved for permission to provide alternative notice which would satisfy the notice requirement.

15. The Second Amended Advice Letter No. 1912 incorporates “feedback” Public Service received from UCA and Commission Staff. The Advice Letter states that the primary additional change is including the PTC PIM in the ECA Tariff. All savings up to fifty percent will flow entirely to customers; savings in excess of fifty percent will be shared sixty percent to customers and forty percent to the Company.¹ In addition, to ensure transparency, Public Service has committed to “various reporting requirements,” including disclosing the number of PTCs earned, the number of PTCs transferred within the immediate past quarter and past year, total MWh generated at each facility, and the average transaction cost of the transfers.² Finally, the Company advises in the Second Amended Advice Letter that although the transaction costs and the Company’s share of the PIM will be passed through to customers through the ECA, “The Company expects that allowing tax credit transferability will likely result in lower costs for customers, which will also be realized through the ECA.”³

16. Based upon good cause shown for the unopposed Motion for Leave to Amend, the request for leave to amend the Application Advice Letter and accompanying Tariff Sheet will be granted.

17. As now amended, the ALJ notes that Advice Letter No. 1912 – Electric Second Amended filed on April 14, 2023, does not include an effective date.

18. Rule 1210(c)(II)(H), 4 CCR 723-1, explicitly requires Advice Letters to include the “proposed effective date” of the accompanying Tariff Sheets.

¹ Advice Letter No. 1912 – Electric Second Amended, filed April 14, 2023, p. 2.

² *Id.*

³ *Id.* at p. 3.

19. The Advice Letter may become effective any time after twenty days following the issuance of this Recommended Decision.

20. In order to comply with Rule 1210(c)(II)(H), Public Service must further amend the Advice Letter to state the proposed effective date of the Advice Letter. The further amended Advice Letter must be filed before this Recommended Decision becomes a decision of the Commission.

III. MOTION FOR ALTERNATIVE FORM OF NOTICE

21. As referenced above, Public Service filed a Motion for Commission Approval of an Alternative Form of Notice contemporaneously with its Motion for Leave to Amend. In its Motion for Approval of Alternative Form of Notice, the Company requests that it be permitted to:

- a) Post legal notice of the Amended Advice Letter and Tariff Sheets on its public website and keep the filing open for inspection pursuant to § 40-3-104(1)(c)(I), C.R.S.; and
- b) Provide electronic service of the filing to all parties in Proceeding Nos. 21AL-0317E (the 2021 Electric Rate Case proceeding) and 22A-0345E (the 2021 ECA Prudence Review proceeding).

22. Public Service states that it seeks these alternative forms of notice “to avoid incurring the expense that is entailed in other forms of statutory notice.”⁴ The Company further expressed concern that inundating customers with emails will have a negative impact on future notices because it “will drive customers to unsubscribe or opt out of receiving emails or texts.”⁵

23. Public Service contends that good cause therefore exists for granting its Motion for Alternative Form of Notice and states that the proposed alternative notice “is sufficient to alert

⁴ Motion of Public Service Company of Colorado for Commission Approval of an Alternative Form of Notice, filed April 14, 2023, ¶ 2, p. 2.

⁵ *Id.*, ¶ 4, p. 2.

affected and interested parties of the changes that the Company is proposing by this Advice Letter.”⁶

24. Neither UCA nor Commission Staff filed a response to the Motion for Alternative Form of Notice.

25. Pursuant to § 40-3-104(1)(c)(I)(E), C.R.S., and Rule 1207(b), 4 CCR 723-1, a utility may request permission to provide alternative forms of notice of any changes to or contracts affecting its rates or charges. UCA and Commission Staff may oppose such a motion but must file a responsive pleading within two business days. *See* Rule 1207(b), 4 CCR 723-1.

26. The Commission granted Public Service’s first request for alternative forms of notice in this Proceeding by Decision No. C22-0829-I, issued December 22, 2022. Decision No. C22-0829-I permitted the Company to post legal notice of Advice Letter No. 1912 on the Company’s website and to provide electronic notice of the Advice Letter to parties to Proceeding Nos. 21AL-0317E and 22A-0345E. The relief granted by Decision No. C22-0829-I is thus identical to the Company’s request for Alternative Form of Notice filed April 14, 2023.

27. The ALJ finds that good cause exists for granting Public Service’s Motion for Commission Approval of an Alternative Form of Notice. The ALJ notes that notice of the Amended Advice Letter will be available for customers’ review on the Company’s website; that electronic notice will be provided to parties involved in other proceedings with the Company; that this Advice Letter does not raise customers’ rates; that it is important to ensure email notifications to customers are tailored to important and/or critical information to minimize the potential of

⁶ *Id.*, ¶ 5, p. 2-3.

customers disregarding or unsubscribing from email notifications; and that neither UCA nor Commission Staff has objected to Public Service's request for alternative form of notice.

28. The ALJ will therefore grant Public Service's Motion for Commission Approval of an Alternative Form of Notice.

IV. LIFTING OF SUSPENSION

29. By Decision No. C23-0030, the Commission suspended the proposed effective date of Advice Letter No. 1912 up to and including May 15, 2023. The undersigned ALJ extended the suspension an additional 130 days, or up to and including September 22, 2023, by Decision No. R23-0165-I. The proposed effective date of Advice Letter No. 1912 is thus currently suspended.

30. UCA and Commission Staff intervened in this Proceeding and an evidentiary hearing was scheduled to be held on June 1, 2023.

31. As noted above, the parties have resolved the issues set to be litigated at the evidentiary hearing and Public Service has moved for leave to file an Amended Advice Letter and amended Tariff Sheets reflecting the agreements reached by the parties.

32. On the same date that the Company filed its Motion for Leave to Amend and its Motion for Approval of Alternative Form of Notice, UCA and Commission Staff independently filed Notices of Withdrawal of their respective Interventions. Consequently, Public Service's amendments to Advice Letter No. 1912 and the accompanying Tariff Sheets Nos. 17A, 143D, 143G, and 143H are now unopposed and uncontested.

33. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1, the uncontested Advice Letter may be processed under the modified procedure, without a formal hearing.

34. As explained by Public Service and agreed to by UCA and Commission Staff, Advice Letter No. 1912 and Tariff Sheets Nos. 17A, 143D, 143G, and 143H, as amended, will modify the Company's ECA tariff sheets to accommodate transaction costs associated with the monetization of Production Tax Credits (PTCs) associated with the Company's Rush Creek and Cheyenne Ridge Wind Projects. The modifications should result in savings to Public Service's customers. Further, the first fifty percent of savings will inure directly to customers, while the second fifty percent will be split between customers and the Company, sixty percent and forty percent, respectively. Finally, amended Advice Letter No. 1912 and Tariff Sheets Nos. 17A, 143D, 143G, and 143H, incorporate new reporting requirements mandating that Public Service advise Commission Staff of additional information, including disclosing the number of PTCs earned, the number of PTCs transferred within the immediate past quarter and past year, total MWh generated at each facility, and the average transaction cost of the transfers.

35. Based upon the foregoing, Public Service has demonstrated that the concerns leading the Commission to suspend the proposed effective date in Decision No. C23-0030 have now been fully resolved by the parties. It is found and concluded that good cause exists to lift the suspension, permitting Advice Letter No. 1912 and Tariff Sheets Nos. 17A, 143D, 143G, and 143H, as amended, to become effective. The suspension of Advice Letter No. 1912 and Tariff Sheets Nos. 17A, 143D, 143G, and 143H will therefore be lifted and will be permitted to become effective if this Recommended Decision becomes a Commission decision, or on or by a later effective date of the further Amended Advice Letter No. 1912.

36. In accordance with § 40-6-109, C.R.S., the ALJ recommends the Commission enter the following order.

V. ORDER**A. It Is Ordered That:**

1. Consistent with the above discussion, the Unopposed Motion of Public Service Company of Colorado for Leave to Amend Pursuant to Rule 1309(a) is granted.

2. Before this Recommended Decision becomes a decision of the Commission, Public Service shall file a Third Amended Advice Letter No. 1912 incorporating an effective date that is at least twenty days after the issuance of this Recommended Decision.

3. The Motion of Public Service Company of Colorado for Commission Approval of an Alternative Form of Notice is granted.

4. The Notice of Withdrawal of Intervention of Right filed by the Office of the Utility Consumer Advocate is acknowledged.

5. The Notice of Withdrawal of Intervention and Request for Hearing filed by Commission Trial Staff is acknowledged.

6. The suspension of the proposed effective date of tariffs accompanying Advice Letter No. 1912 by Decision Nos. C23-0030 and R23-0165-I, Tariff Sheets Nos. 17A, 143D, 143G, and 143H, is rescinded.

7. Tariff Sheets Nos. 17A, 143D, 143G, and 143H may be permitted to go into effect by operation of law as of a further amendment to reflect an effective date that shall not be sooner than this Recommended Decision becoming a decision of the Commission.

8. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

9. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

Rebecca E. White,
Director