

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23D-0591E

IN THE MATTER OF THE COLORADO COMMUNICATION AND UTILITIES ALLIANCE,
THE TOWN OF MORRISON, AND THE CITIES OF ARVADA, AURORA, CENTENNIAL,
NORTHGLENN, AND WHEAT RIDGE'S PETITION FOR A DECLARATORY ORDER
REGARDING PUBLIC SERVICE COMPANY OF COLORADO'S CUSTOMER OWNED
LIGHTING TARIFF AND PAYMENT RESPONSIBILITY FOR STATE AND INTERSTATE
HIGHWAY STREETLIGHTING.

**INTERIM COMMISSION DECISION ACCEPTING
PETITION FOR DECLARATORY ORDER, ISSUING
NOTICE, ESTABLISHING 30-DAY INTERVENTION
PERIOD, AND REFERRING MATTER TO AN
ADMINISTRATIVE LAW JUDGE**

Mailed Date: February 7, 2024

Adopted Date: January 17, 2024

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TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR
CORPORATIONS:

I. BY THE COMMISSION**A. Statement**

1. By this Decision the Commission accepts and issues notice of the Petition for Declaratory Order (Petition) filed on December 4, 2023, by the Colorado Communication and Utility Alliance (CCUA), the Town of Morrison, and the Cities of Arvada, Aurora, Centennial, Northglenn, and Wheat Ridge (collectively, Local Governments), which requests that the Commission issue a declaratory order regarding the payment responsibility and terms and conditions for state and interstate highway streetlighting under the terms of the Customer Owned Lighting Tariff (COL Tariff) of Public Service Company of Colorado (Public Service or Company). We establish a 30-day notice and intervention period for Local Governments' Petition. Interventions shall be due by **5:00 p.m. on March 7, 2024**.

2. This Decision also addresses the notices of intervention and alternative requests for permissive intervention that have already been filed by Public Service and the Colorado Department of Transportation (CDOT) on December 21, 2023, and December 29, 2023, respectively, and denies CDOT's motion to dismiss certain portions of the Petition that it claims would apply to CDOT.

3. The Commission refers the remainder of this matter to an Administrative Law Judge (ALJ) for disposition.

B. Petition for Declaratory Order

4. On December 4, 2023, the Local Governments filed the Petition explaining that, for some time, numerous municipalities, Public Service, and CDOT have been debating the responsibility for payment of certain state and interstate streetlighting costs, and that this dispute has led CDOT to stop payment for streetlighting service on its roadways within certain

municipalities. The Local Governments state that Public Service argues municipalities should be responsible for energy and maintenance charges for state and interstate highway streetlights that are within municipal boundaries, but were not installed or requested to be installed by the municipalities nor maintained, owned, or otherwise controlled by municipalities. The Local Governments contend that payment responsibility for state and interstate highway streetlighting lies with CDOT unless the streetlights were voluntarily accepted into a municipality's street system and the terms and conditions of the COL Tariff were followed to accomplish a transfer of responsibility.

5. Providing additional background, the Local Governments assert that under the State Highway Act, § 43-2-101, *et seq.*, C.R.S., and the Highway Law, § 43-1-201, *et seq.*, C.R.S., CDOT is generally responsible for maintenance of the State Highway System, that municipalities are responsible for illumination on a "street within the state highway system," and that "simply because a state highway extends through a city does not thereby transform it into a 'street within the state highway system.'"¹ The Local Governments explain that starting around 2017, CDOT demanded some local governments assume responsibility for state and interstate highway streetlighting, but in most cases CDOT has not actually transferred the ownership of state and interstate highway streetlights to local governments. The Local Governments state that in some jurisdictions CDOT has threatened non-payment, some local governments have entered into agreements with CDOT to pay for the streetlights, and that most jurisdictions have refused to pay for the streetlights.

6. The Local Governments state that they are aware of one instance in which CDOT ceased paying for the disputed streetlighting service – on C-470 within the Town of Morrison

¹ Petition at 5.

(Morrison) – and that upon CDOT’s cessation of payment relating to the C-470 streetlights, Public Service requested payment from Morrison. The Local Governments state that in a letter received by Morrison on August 17, 2023, Public Service included that “the Company will be petitioning the PUC to address and resolve this issue.”² The Petition states that several of the Local Governments have also received similar demands regarding payment responsibility from CDOT and/or Public Service, and that others are fearful they will receive a demand without warning and face a sudden and significant impact on local budgets and tax dollars.

7. The Local Governments state that the disputed streetlights are served under the COL Tariff. They contend that while the COL Tariff states it is “applicable to [CDOT] and municipalities for Customer-Owned Lighting Service,” in practical effect the COL Tariff is only available to CDOT.³ The Local Governments claim streetlights installed and owned by municipalities are served under the Energy Only Street Lighting Service Tariff or the Metered Street Lighting Service Tariff. They argue that “implicit in the COL Tariff’s applicability is that the customer actually owns the street light.”⁴ They also contend that the COL Tariff contains specific language for the transfer of COL Tariff service to a Street Lighting Tariff service, namely: “to transfer lights to municipal responsibility under the SL Tariff, street lights served under the COL Tariff must be: (1) owned by the Municipality; (2) installed by CDOT; (3) located within municipal boundaries; (4) requested by the municipality to be billed under the Street Light Service tariff; and (5) Public Service pays the municipality a ‘Construction Allowance’ for the lights.”⁵

8. In the Petition, the Local Governments therefore request a declaratory order clarifying that payment responsibility for interstate and state highway streetlighting shall remain

² Petition at 11.

³ Petition at 8.

⁴ Petition at 8.

⁵ Petition at 8-9.

with CDOT unless: (1) the state or interstate highway where the street light resides has been accepted into the municipal street system; (2) the municipal customer has ownership of the street light or has agreed to the payment responsibility for that street light; and (3) prior to that street light being transferred to the Street Lighting Tariff, the transfer procedures of the COL Tariff are followed including a request from the municipal owner of the street light that the street light be transferred to the Street Lighting Tariff and payment of the then-applicable construction allowance.

C. Additional Preliminary Filings and Decision

9. On December 19, 2023, Public Service and CDOT filed a Joint Motion to Stay the Commission's Determination of Whether to Accept or Deny the Petition (Motion to Stay). In the Motion to Stay, Public Service and CDOT contended it was unclear whether the Commission could make the requested clarifications given the various franchise agreements, rate schedules, and statutory interpretations that may be involved. Public Service and CDOT requested until January 24, 2024, to respond to the threshold question of whether the Commission should accept or not accept the Petition.

10. By Decision No. C23-0861-I, issued December 22, 2023, the Commission construed the Motion to Stay as a public comment, due to the fact that Public Service and CDOT were not parties to the proceeding, and found that additional information focused on the threshold issue of whether to accept or not accept the Petition may be helpful. We required that any responses to the Petition be filed by January 3, 2024, and any replies be filed by January 10, 2024.

11. On December 21, 2023, Public Service filed a Notice of Intervention as of Right and Unopposed Alternative Motion for Permissive Intervention and Waiver of Response Time. Public Service states that because the crux of the Petition is directed at the Company and the interpretation and application of its COL Tariff, it is entitled to intervene in this Proceeding as a

matter of statutory right pursuant to Rule 1401(b), 4 *Code of Colorado Regulations* (CCR) 723-1, and § 40-6-109(1)(a)(I)(D), C.R.S., because it is the “person, firm, or corporation complained of” in the Petition. In support of its alternative motion for permissive intervention, Public Service states its pecuniary and tangible interests would be impacted by the interpretation and application of its electric tariff and the franchise agreements between the Company and various local governments. Public Service also states that for the last few months, it has been working to prepare its own petition for declaratory order to request a Commission determination that Morrison is required to pay for electric service for the Morrison C-470 streetlights.

12. On December 29, 2023, CDOT filed a Notice of Intervention as of Right and Alternative Motion for Permissive Intervention. CDOT states that because a portion of the Petition is directed at CDOT and interpretation and application of CDOT’s transportation-related statutes and because the Petition asks the Commission to order CDOT to pay for streetlighting, CDOT is entitled to intervene as a matter of statutory right pursuant to Rule 1401(b) and § 40-6-109(1)(a)(I)(D), C.R.S. In support of its alternative motion for permissive intervention, CDOT states it is the only entity that can adequately represent its direct and tangible interests in the Proceeding.

13. On January 3, 2024, CDOT filed a Motion in Opposition to the Petition and a Partial Motion to Dismiss. In its response, CDOT argues that the Commission lacks the authority to govern this matter because it is outside of the Commission’s jurisdiction to regulate. CDOT asserts that, because the Commission has not been granted authority by the Colorado Constitution or the General Assembly to govern or regulate CDOT, it is unable to grant the Local Governments’ requested relief. Further, CDOT argues that even if the Commission finds that it has the authority to regulate CDOT, it does not have the authority to conduct statutory interpretation of the relevant

transportation statutes. To support this point, CDOT states that the central dispute presented in the Petition does not arise out of the interpretation of utility tariffs, but rather out of transportation statutes in Title 43 that govern the division of authority over streets. CDOT argues that because this dispute would necessarily involve interpretation of these transportation statutes, the Commission does not have the authority to address or resolve the matter. It requests that the Commission decline to consider all portions of the Petition that require interpretation of statutes that are outside of the Public Utility Law or that will act to bind CDOT, dismiss all portions of the petition that apply to CDOT for lack of subject matter jurisdiction, or exercise its discretion pursuant to Rule 1304(f)(III), 4 CCR 723-1, to not accept the Petition.

14. In its Response filed January 3, 2024, Public Service argues that the only live controversy specifically asserted in the Petition is the issue of payment responsibility for electricity and maintenance costs associated with the streetlighting located on C-470 within Morrison. Further, it argues the Local Governments' request would require the Commission to first determine whether all of the streetlighting potentially at issue in the Petition is located on a "street within a state highway system," and, second: "(i) identify all of the streetlighting located on state or interstate highways within the jurisdictional boundaries of cities or towns across Public Service's service territory (and perhaps the service territories of other Colorado electric utilities) that the Commission has determined are not on a 'street within a state highway system' through Step 1; (ii) establish whether each local government has nonetheless assumed the contractual responsibility to pay for the electricity and maintenance costs associated with such streetlighting under its applicable Commission-approved franchise agreement with Public Service, other Colorado electric utilities, or other potentially applicable agreements with CDOT; and

(iii) determine whether rate schedule COL should be required to apply to such streetlighting in each instance, rather than currently designated and effective electric utility rate schedules.”⁶

15. Public Service’s Response asks that the Commission accept the Petition only for the limited purpose of resolving the streetlighting dispute in Morrison, and that Morrison be named the sole petitioner in the matter. It states that to the extent there are remaining or future controversies concerning payment responsibility, these are more appropriately addressed through separate proceedings, while noting that it “expects that the Commission’s legal determinations in the instant proceeding will help inform the efficient resolution of any related controversies.”⁷

16. Public Service acknowledges CDOT’s concern regarding the Commission’s jurisdiction and states the Commission should reject the Petition in its entirety if the Commission determines it lacks the necessary jurisdiction to adjudicate it. It also states “[t]o the extent the Commission determines that it has the requisite jurisdiction, Public Service believes that the Commission can resolve the dispute concerning the Morrison C470 Lights in a manner that provides appropriate deference to CDOT’s interpretation of statutes within CDOT’s purview,” and that the Commission has broad authority to ensure that Public Service will receive payment under its effective tariffs.⁸

17. On January 10, 2024, the Local Governments filed a reply to the responses of Public Service and CDOT (Reply). In their Reply, the Local Governments claim that CDOT and Public Service misconstrue the scope and purpose of the Petition and that the Petition only asks “if, when, and how may [Public Service] transfer payment for state and interstate highway street lights to

⁶ Public Service Response at 4.

⁷ Public Service Response at 5-6.

⁸ Public Service Response at 6.

local government responsibility under the terms and conditions of the COL Tariff.”⁹ The Local Governments state the Petition involves only streetlights within Public Service’s service territory and interpretation of Public Service’s streetlighting tariffs. They state that, contrary to Public Service’s assertions, they are not requesting the Commission issue an order binding on all Colorado electric utilities, analyze local franchises, or perform a streetlight by street light analysis of the type of street or state highway where a streetlight resides. The Local Governments state they are not requesting the Commission regulate CDOT, and that CDOT’s involvement is limited to the fact that CDOT’s inconsistent decisions to stop paying for some state and interstate highway streetlighting has driven Public Service to demand payment from local governments. They emphasize that, while the origin of the dispute is rooted in CDOT’s interpretation of the Highway Law and State Highway Act, the foundational issue in the Petition involves Public Service’s actions under its tariffs. The Local Governments also argue that the Commission has jurisdiction to resolve the controversy, as the Commission has exclusive jurisdiction over claims concerning enforcement of public utility tariffs. They point to § 40-3-102, C.R.S., which empowers the Commission to “generally supervise and regulate every public utility in this state; and to do all things, whether specifically designated [in the utilities code] or in addition thereto, which are necessary and convenient in the exercise of such power.”

18. In response to Public Service’s request to limit the controversy to issues involving Morrison, the Local Governments state each of the local governments that filed the Petition, and the majority of the members of the CCUA, have streetlights located on state and interstate highways within their jurisdictional boundaries that are serviced by Public Service. They state that for the limited purpose of determining the threshold issue of whether a controversy

⁹ Local Governments’ Reply at 5.

exists, it is disingenuous for Public Service to suggest the only live controversy involves Morrison, as other Petitioners have received demands for payment in the past. They contend that designating Morrison as the sole petitioner in this matter would be inefficient and unfair to the other impacted local governments because the controversy and the interpretation of the COL Tariff has a direct effect on them.

D. Findings and Conclusions

19. We find it appropriate to address the intervention filings of Public Service and CDOT at this early stage in the Proceeding to properly consider their other filings. Any additional intervention filings will be addressed by the ALJ at a later date, as discussed below.

20. Under Rule 4 CCR 723-1-1401(b), a notice of intervention as of right must state the basis for the claimed legally protected right that may be affected by the proceeding, and no decision is necessary for timely and appropriately filed notices of interventions of right. Under Rule 4 CCR 723-1401(c), movants requesting permissive intervention are required to demonstrate a pecuniary or tangible interest that may be substantially affected by the proceeding, and that the interest would not otherwise be adequately represented.

21. We agree that Public Service is a “person, firm, or corporation complained of” in the Petition, and is entitled to intervene under § 40-6-109(1)(a)(I)(D), C.R.S. The Commission acknowledges that Public Service is an intervenor as of right in this matter.

22. We decline to find that CDOT is an intervenor as of right. As the Petition states, and as clarified by the Local Governments’ Reply, the Petition concerns Public Service’s actions under its street lighting tariffs. Instead, we grant CDOT’s request for permissive intervention.

23. The Commission may entertain a petition for declaratory order to terminate a controversy or remove an uncertainty regarding any tariff, statute, or Commission rule, regulation,

or order. Rule 4 CCR 723-1-1304(i)(II). If a petition meets those requirements, the Commission then exercises its discretion to accept or dismiss the petition.

24. We find that there is a controversy concerning payment responsibility for certain state and interstate streetlights under Public Service's street lighting tariffs. We further find that the Commission evaluating the questions presented in the Petition, as clarified by the Local Governments' Reply, may remove uncertainty regarding Public Service's ability to transfer payment for state and interstate highway streetlights to local government responsibility under the terms and conditions of the Company's street lighting tariffs. We therefore accept the Petition and issue notice of the Petition to interested persons, firms, and corporations by service of this Decision.

25. While we recognize the preliminary concerns raised by CDOT, we reject CDOT's requests that the Commission decline to hear or dismiss portions of the Petition at this time. This Proceeding has the potential to impact CDOT, but we do not agree that evaluating the questions raised by the Petition will necessarily result in the Commission regulating or governing CDOT. As stated in the Petition and Reply, the Local Governments request the Commission clarify what *Public Service* may do under its tariffs. Further, the Commission has broad statutory¹⁰ and constitutional authority¹¹ to regulate public utilities operating in Colorado and their facilities,

¹⁰ See, e.g., § 40-3-102, C.R.S. (granting Commission authority to generally supervise and regulate every public utility and to do all things necessary or convenient in the exercise of such power); see also *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 26 P.3d 1198, 1205 (Colo. 2001) (holding the Commission "has broadly based authority to do whatever it deems necessary to accomplish the legislative functions delegated to it."); see also *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 576 P.2d 544, 547 (Colo. 1978) ("It can therefore be said that the PUC in the area of utility regulation, including rate making, has broadly based authority to do whatever it deems necessary or convenient to accomplish the legislative functions delegated to it.").

¹¹ See Colo. Const. art. XXV. (General Assembly delegating to Commission broad legislative authority to regulate public utilities and their facilities, service, and rates.); see also *Miller Brothers v. Pub. Utils. Comm'n*, 525 P.2d 443, 451 (1974) (holding the Commission has as much authority as the General Assembly possessed prior to the adoption of Article 25 in 1954, until the General Assembly by statutory language restricts the legislative functions exercised by the Commission in regulating public utilities).

services, and rates. This authority extends to incidental powers which are necessary to regulate public utilities and may, in some cases, include analysis of statute codified outside of the Public Utilities Law or Title 40 when that statute affects a public utility. In consideration of this role as state regulator of public utilities, we decline at this early stage in the Proceeding to strictly limit the issues that may be analyzed, as CDOT requests. We expect that, to the extent necessary, the ALJ assigned to this matter will determine which statutory interpretations are required by the Commission to clarify Public Service's ability to transfer payment responsibility, and whether it is appropriate for the Commission to opine on such interpretations in the context of this Petition.

26. We also reject Public Service's request to limit application of the Petition to the payment responsibility dispute between the Company and Morrison. As Public Service states, a decision regarding payment responsibility for streetlights located in Morrison could inform any additional or future controversies. The Local Governments state each jurisdiction that filed the Petition has streetlights served under Public Service's street lighting tariffs, and jointly request clarification under these tariffs. To hear separate controversies, when the municipalities present a collective argument, would be inefficient and present issues of fairness.

27. The Commission refers this matter to an ALJ for disposition, including any additional interventions that may be filed during the notice period.

28. The Petition is available for public inspection by accessing the Commission's E-Filings System at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=23D-0591E

29. This Decision is the notice that the Local Governments' Petition for Declaratory Order regarding Public Service's ability to transfer payment responsibility to municipalities under its street lighting tariffs has been filed with the Commission.

30. This Decision establishes a 30-day notice and intervention period for the Local Governments' Petition. The Commission's notice period for the Petition shall extend through and include **5:00 p.m. on March 7, 2024**. The intervention period will run concurrent with the notice period. Interventions shall be due by **5:00 p.m. on March 7, 2024**.

II. ORDER

A. It Is Ordered That:

1. The Petition for Declaratory Order filed by the Colorado Communication and Utility Alliance, the Town of Morrison, and the Cities of Arvada, Aurora, Centennial, Northglenn, and Wheat Ridge (collectively, the Local Governments) on December 4, 2023, is accepted.

2. The notice of intervention as of right filed by Public Service Company of Colorado (Public Service) on December 21, 2023, is acknowledged, and Public Service is a party to this Proceeding.

3. The request for permissive intervention filed by the Colorado Department of Transportation (CDOT) on December 29, 2023, is granted.

4. The Partial Motion to Dismiss filed by CDOT on January 3, 2024, is denied.

5. Service of this Decision will provide notice of the Petition to all interested persons, firms, and corporations.

6. The notice period for the Petition shall extend through and include **5:00 p.m. on March 7, 2024**.

7. Any person desiring to intervene or participate as a party in this Proceeding shall file a petition for leave to intervene or, pursuant to the Commission's Rules of Practice and Procedure, other appropriate pleadings to become a party by **5:00 p.m. on March 7, 2024**.

8. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments on or before **5:00 p.m. on March 7, 2024**, addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, or through the Commission's E- Filings System at:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>

9. The Commission refers the matter to an Administrative Law Judge for disposition consistent with the discussion above.

10. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 17, 2024.**

(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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MEGAN M. GILMAN

TOM PLANT

Commissioners