Decision No. C14-1043

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0660E

IN THE MATTER OF ADVICE LETTER NO. 1672 - ELECTRIC OF PUBLIC SERVICE COMPANY OF COLORADO TO REVISE THE GENERAL RATE SCHEDULE ADJUSTMENT (GRSA) RIDER APPLICABLE TO ALL ELECTRIC BASE RATE SCHEDULES AND REVISE THE TRANSMISSION COST ADJUSTMENT (TCA) TO REMOVE COSTS THAT HAVE BEEN SHIFTED TO BASE RATES TO BECOME EFFECTIVE JULY 18, 2014.

PROCEEDING NO. 14A-0680E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS ARAPAHOE DECOMMISSIONING AND DISMANTLING PLAN.

INTERIM DECISION SETTING APPLICATION FOR HEARING BEFORE THE COMMISSION *EN BANC*, CONSOLIDATING PROCEEDINGS, ADDRESSING INTERVENTIONS, GRANTING MOTIONS TO APPEAR *PRO HAC VICE,* GRANTING MOTIONS FOR PROTECTIVE ORDERS, SCHEDULING A PREHEARING CONFERENCE, REQUIRING FILINGS, FURTHER SUSPENDING TARIFFS, AND REFERRING CERTAIN MATTERS TO AN ADMINISTRATIVE LAW JUDGE

Mailed Date: August 28, 2014
Adopted Date: August 20, 2014

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I. BY THE COMMISSION

A. Statement

1. On June 17, 2014, Public Service Company of Colorado (Public Service or Company) filed Advice Letter No. 1672 in Proceeding No. 14AL-0660E. Public Service seeks to increase its base rate revenues by $157.6 million and to revise its Transmission Cost Adjustment to remove costs that would be shifted to base rates. In addition, Public Service seeks approval of a rider for recovering incremental costs of projects undertaken pursuant to the Company's emission reduction plan under the Clean Air Clean Jobs Act (CACJA). Public Service further requests approval of a revenue decoupling mechanism for its residential and

small commercial rate classes and approval of a performance mechanism associated with the Company's operation of certain generating units on its system.

2. On June 23, 2014, Public Service filed an Application for Approval of Arapahoe Decommissioning and Dismantling Plan (Application) in Proceeding No. 14A-0680E. Public Service requests final authorization to decommission and dismantle its Arapahoe Generating Station and to remediate and restore the plant site at an estimated cost of $34.8 million.

3. On June 25, 2014, the Commission issued a Notice of Application Filed, requiring requests for intervention in Proceeding No. 14A-0680E to be filed no later than July 25, 2014.

4. By Decision Nos. C14-0763-I and C14-0765-I, issued July 8, 2014, the Commission set August 11, 2014 as the deadline for responses to the Motion to Consolidate Proceedings filed by Public Service on June 23, 2014, in Proceeding No. 14A-0680E and on June 24, 2014, in Proceeding No. 14AL-0660E.

5. By Decision No. C14-0807, issued July 15, 2014, the Commission set the tariffs filed under Advice Letter No. 1672 for hearing before the Commission *en banc*. The Commission also established a notice and intervention period, requiring requests for intervention in Proceeding No. 14AL-0660E to be filed no later than August 11, 2014.

6. On August 11, 2014, the Application was deemed complete by operation of Commission Rule 1303(c)(III), 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure.

7. By this Decision, as discussed below, we set the Application for hearing, grant the Motion to Consolidate Proceedings, address the requests for intervention, grant motions to appear *pro hac vice*, grant motions for protective orders, schedule a prehearing conference for

the purpose of establishing a procedural schedule, and refer discovery disputes and further motions for protective orders to an Administrative Law Judge (ALJ).

B. Motion to Consolidate Proceedings

8. In its Motion to Consolidate Proceedings, Public Service explains that, as part of its proposed increase in electric rates in Proceeding No. 14AL-0660E, the Company would amortize over a four-year period, the regulatory assets established for Arapahoe Units 1 through 4 and would recover the resulting annual amortization expense beginning in early 2015.

9. Public Service states that there is significant overlap of information and issues in the two proceedings, such as the estimated decommissioning costs for Arapahoe Station and the Company's plan proposed in the rate case for recovering the difference between: (1) the updated estimated Arapahoe decommissioning cost; and (2) the cost of removal included in the depreciation accruals for Arapahoe Station and recovered in the Company's base rates over the life of the station and through 2014.

10. Public Service argues that the Commission should consider the Company's comprehensive proposal for cost recovery related to its plant retirements in the context of a comprehensive rate case, rather than through a separate application that relates solely to the decommissioning of the Arapahoe Station. Public Service also argues that because of this interrelationship, the proceedings should be consolidated for hearing and decision.

11. In addition, Public Service states that no party would be prejudiced by the consolidation of the proceedings because Advice Letter No. 1672 and the Application were filed within four business days of each other and consideration of these issues in one proceeding would save time and resources.

12. In its Notice of Intervention by Right and Request for Hearing filed on July 22, 2014, in Proceeding No. 14A-0680, the Colorado Office of Consumer Counsel (OCC) states it is concerned whether the proposed decommissioning and dismantling plan is appropriate, and whether the proposed $34.8 million cost is just and reasonable. The OCC further states that a formal evidentiary hearing will be necessary. The OCC expresses support for the Motion to Consolidate the Proceedings filed by Public Service.[1]

13. Rule 1402 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, states that, either on its own motion or on the motion of a party, the Commission may consolidate proceedings where the issues are substantially similar and the rights of the parties will not be prejudiced.

14. We agree with Public Service that there is significant overlap of the two proceedings and administrative efficiencies will be gained by the consolidation of the cases. In addition, the motion is unopposed, and we find that consolidation will not prejudice any party. Therefore, we consolidate Proceeding Nos. 14AL-0660E and 14A-0680E. Proceeding No. 14AL-0660E shall serve as the primary proceeding.

C. Interventions

1. Interventions by Right

15. Rule 1401(b), 4 CCR 723-1 address notice of intervention as of right. On July 16, 2014, Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Intervention by Right and Request for Hearing in Proceeding No. 14AL-0660E. In the notice, Staff indicates it will investigate and potentially address as issues: the proposed rider for recovery of incremental

[1] In its Motion to Intervene filed on July 24, 2014, the Colorado Energy Consumers Group (CEC) states that it does not object to the motion.

costs associated with the CACJA projects and the reasonableness of the associated $54.8 million for capital cost additions and depreciation; the approximate $2 billion of new capital investment for the period from January 1, 2014, through December 31, 2015; the Company's proposed test year, including its accuracy; the proposed authorized return on equity (ROE) of 10.35 percent; the Company's projected operations and maintenance expenses and their relationship to the proposed generation performance benchmarking plan; the amortization periods and reallocation of existing depreciation reserves; the Company's sales and property tax forecasts; and the compensation and benefits included in the revenue requirement, including the costs of the Company's pension plans.

16. On July 22, 2014, the OCC filed a Notice of Intervention by Right and Request for Hearing in Proceeding No. 14AL-0660E. The OCC explains that, pursuant to § 40-6.5-104, C.R.S., it is statutorily mandated to represent residential, small business, and agricultural customers in this matter. With that charge, the OCC states that it has concerns about the following elements of the rate case: the proposed net annual rate increases to the OCC's constituency; the request for approval of a CACJA rider; the generation performance benchmarking plan; the proposed revenue decoupling mechanism; the significant increase in its requested ROE and overall return on rate base; and the proposal to include in rate base over $2 billion of new capital investments.

2. Permissive Intervention

17. Rule 1401(c), 4 CCR 723-1 allows for permissive intervention subject to a demonstration that the proceeding may substantially affect the pecuniary and tangible interests of

the movant. The motion must also show that the movant's interests would not otherwise be adequately represented in the proceeding. Rule 1401(c), 4 CCR 723-1, states in 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.

18. The requirement in Rule 1401(c) requiring persons or entities seeking permissive intervention in a proceeding to represent that their interests "would not otherwise be adequately represented" is similar to Colorado Rule of Civil Procedure (CRCP) 24(a), which provides that even if a party seeking intervention in a case has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties. *See Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass'n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case's judgment. *See Denver Chapter of the Colo. Motel Ass'n v. City & County of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city). The test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative. The presumption of adequate representation can be overcome by evidence of bad faith, collusion, or negligence on the part of the representative. *Id.*; *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

19. Further, Rule 1401(c), 4 CCR 723-1, requires that a movant who is a "residential customer, agricultural customer, or small business customer" must discuss in the motion whether the distinct interest of the consumer is either not adequately represented by the OCC or

inconsistent with other classes of consumers represented by the OCC. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., the OCC has a statutory mandate to represent the interests of residential ratepayers. The Colorado Supreme Court expressly stated that "if there is a party charged by law with representing his interest, then a compelling showing should be required to demonstrate why this representation is not adequate." *Feigen v. Alexa Group, Ltd.*, 19 P.3d 23, 26 (Colo. 2001).

a. Customers and Ratepayer Representatives

20. Several of Public Service's large, non-residential customers timely filed requests to intervene in Proceeding No. 14AL-0660E. These entities include: the City of Boulder (Boulder);[2] the Colorado Energy Consumers Group (CEC);[3] Climax Molybdenum Company (Climax); CF&I Steel, LP, doing business as Evraz Rocky Mountain Steel (Evraz); Wal-Mart Stores, Inc. and Sam's West, Inc. (Wal-Mart); The Kroger Company (Kroger);[4] the Federal Executive Agencies (FEA);[5] and the Colorado Healthcare Electric Coordinating Council (CHECC).[6] Each of these entities is represented by counsel.

21. These large, non-residential ratepayers have a tangible and pecuniary interest in the outcome of these consolidated proceedings, and their particular interests will not be

[2] Boulder states that it is both a customer of Public Service and a representative of its citizens and businesses.

[3] In a supplement to its Motion to Intervene filed on August 1, 2014, in Proceeding No. 14A-0680E, CEC states its members include Air Liquide, Anadarko Petroleum Corporation, Ball Corp., the Denver Metro Building Owners and Managers Association, Lockheed Martin Corporation, MillerCoors, Suncor Energy (U.S.A.) Inc., and Western Metals Recycling.

[4] Kroger states it operates approximately 110 grocery stores in Colorado through its King Soopers and City Market divisions and approximately 90 stores purchase their electric supply from the Company.

[5] FEA includes certain federal agencies of the United States Government which have offices, facilities, and installations in the Company's service area, including the Buckley Air Force Base.

[6] CHECC states that its members provide healthcare at facilities located in Public Service's service territory.

addressed adequately by the OCC or any other party. We therefore grant them party status to address their interests as set forth in their individual requests for intervention.[7]

22. Energy Outreach Colorado (EOC) filed a Motion to Intervene on July 21, 2014, in Proceeding No. 14AL-0660E. EOC is a Colorado nonprofit corporation that seeks to ensure low-income households can meet their home energy needs. Pursuant to Colorado statute, EOC collects and disburses low-income energy assistance funds.

23. EOC states that in excess of several hundred thousand households in Colorado qualify for some form of low-income energy assistance, and that these households generally consist of indigent and elderly persons and persons with disabilities who, without such special financial assistance, do not have the resources to meet their heating and other energy needs. With respect to the rate case proceeding, EOC states many of the persons on whose behalf EOC advocates, and to whom EOC provides or for whom EOC arranges energy assistance, are retail electric customers of Public Service. EOC also notes that the Company proposes to continue its current Commission-approved practice of making charitable donations to EOC (used by EOC for direct payment assistance to low-income customers) calibrated to the amount of late-payment fees the Company collects from residential electric customers during the test year.

24. We find good cause to grant the EOC's intervention to address its interests as set forth in its request. EOC has a tangible and pecuniary interest in the outcome of these consolidated proceedings, and we find that its particular interests will not be adequately addressed by any other party.

[7] We also grant the Motion to Intervene filed by CEC on July 24, 2014, in Proceeding No. 14A-0680E.

b. Southwest Energy Efficiency Project

25. On July 30, 2014, the Southwest Energy Efficiency Project (SWEEP) filed a Petition for Leave to Intervene in Proceeding No. 14AL-0660E. SWEEP is a regional, non-profit public interest group working to advance energy efficiency and the economic and environmental benefits it provides. SWEEP states that Public Service's proposed revenue decoupling mechanism could substantially change the financial arrangements supporting demand side management (DSM) programs and that the outcome of this proceeding could directly and substantially affect its interests.

26. SWEEP argues that its interests are not adequately represented by any other party in this proceeding and that it contemplates providing evidence and legal argument to the Commission.

27. We grant SWEEP's intervention provided that its participation as a party is consistent with its interests in energy efficiency and DSM programs as set forth in its petition. We agree that SWEEP has a pecuniary and tangible interest in the Company's revenue decoupling proposal specified in its intervention. In addition, we agree that the Commission's resolution of this specific issue, the only one raised in SWEEP's request for intervention, could affect substantially SWEEP's interests in promoting energy conservation and efficiency. Further, we agree that no other party will adequately represent SWEEP's particular interests in these consolidated proceedings. SWEEP may conduct discovery, present witnesses, and conduct cross-examination regarding the proposed revenue decoupling mechanism.

c. Clean Energy Action

28. On August 5, 2014, Clean Energy Action (CEA) filed a Motion for Leave to Intervene in Proceeding No. 14AL-0660E. CEA is a 501(c)(3) nonprofit organization based in

Boulder, Colorado, with a mission "to educate the public to support a shift in public policy toward a zero carbon economy."

29. CEA states it has an interest in transitioning away from fuel-based electric generation to mitigate the economic risk associated with unpredictable future costs. CEA states that, while it is not going to object to the recovery of statutory or Commission approved expenses related to the CACJA, its interests will be directly affected by depreciation and amortization policies addressed in this proceeding, because such policies will set precedents for the potential future retirement of additional thermal generation facilities beyond those mandated by the CACJA. CEA further states that it is concerned with the requested authorization for revenue decoupling.

30. In response, Public Service argues that CEA has failed to demonstrate a substantial pecuniary and tangible interest that is not otherwise represented in this proceeding. Public Service argues that this rate proceeding will have only a small and indirect impact on CEA's stated interest in emissions reduction. The Company further argues that CEA has failed to show why Staff and the OCC cannot adequately represent its interests in the Company's approved revenue requirement. Public Service also states that its proposed generation plant performance mechanism is focused on ensuring that reliability does not suffer on account of the Company's proposal to hold operations and maintenance expenses constant at 2013 levels and that the proposed mechanism is not focused on environmental performance.

31. On August 18, 2014, CEA filed a Motion for Leave to Reply to Public Service's response. We find good cause to grant this motion to allow complete briefing on this issue.

32. In its reply to Public Service's response, CEA explains this case entails the "added issues" of revenue decoupling and generator performance mechanisms. CEA contends these issues will affect its interests in transition to a zero carbon economy.

33. We grant CEA's intervention provided that its participation as a party is consistent with its interests in additional emission reductions as set forth in its petition. Specifically, we agree that CEA has an interest in the Company's revenue decoupling proposal and the generator performance mechanisms. The Commission's decisions on these points will directly affect CEA's interests. CEA may conduct discovery, present witnesses, or conduct cross-examination regarding the proposed revenue decoupling and generation performance mechanisms.

34. However, CEA has failed to show why other parties in this proceeding collectively will not represent its interests concerning base rate issues, such as depreciation and amortization policies. Likewise, CEA has not stated an interest in the proposed CACJA rate adjustment mechanism. Approvals of Public Service's fossil fuel generation facilities and investments made pursuant to its emission reduction plan under the CACJA have been addressed already in previous proceedings and are therefore beyond the scope of this rate case.

d. Western Resource Advocates

35. On August 11, 2014, Western Resource Advocates (WRA) filed a Petition for Leave to Intervene in Proceeding No. 14AL-0660E. WRA is a non-profit regional environmental law and policy center serving states within the Interior West of the United States. WRA states it works to protect and restore the natural environment of the Interior West and its Energy Program develops and implements policies to reduce the environmental impacts of the electric power industry by advocating for the expanded use of energy efficiency, renewable energy resources,

and other clean energy technologies. WRA argues this proceeding will affect directly its substantial, tangible interest in reducing the environmental impact from electricity generation.

36. WRA states it has an interest in ensuring Public Service is permitted to recover the costs the Company prudently incurred in effectuating its emission reduction plan under the CACJA. WRA also states it has an interest in securing environmental improvements through increased energy efficiency and electricity demand reduction and the Company's revenue decoupling proposal, if approved, could significantly impact the Company's willingness to pursue greater levels of DSM. WRA further states it reserves the right to respond to other issues in the case, as they may arise.

37. We grant WRA's intervention provided that its participation as a party is consistent with its interests in environmental protection as set forth in its petition, including the revenue decoupling proposal and generator performance mechanisms. The Commission's decisions on these points will directly affect WRA's interests. WRA may conduct discovery, present witnesses, and conduct cross-examination regarding the proposed revenue decoupling and generation performance mechanisms. With respect to the question of whether Public Service will recover the costs it prudently incurred in effectuating its emission reduction plan under the CACJA, for purposes unrelated to WRA's stated interests in environmental protection, we find that Public Service and Staff adequately represent those interests.

e. The Alliance for Solar Choice

38. On August 11, 2014, The Alliance for Solar Choice (TASC) filed a Motion to Intervene. TASC is an association of the nation's largest rooftop solar developers and advocates for maintaining distributed solar energy policies that expand consumer choice in energy supply. TASC argues its interests will not and cannot be represented adequately by any other party.

39. TASC states that credits for excess solar electricity are intertwined with the Company's rates and therefore TASC's members have a direct pecuniary and tangible interest in the outcome of this proceeding. TASC states that it intends to review the Company's decoupling proposal and provide an analysis specific to the solar industry. TASC further states it will investigate the Company's transmission infrastructure forecasts, which are inputs to the Company's proposed rate increase.

40. In response, Public Service argues that TASC has failed to demonstrate a substantial pecuniary and tangible interest that is not otherwise represented in this proceeding. While Public Service concedes that the proposed decoupling mechanism has the potential to affect the rates paid per kWh by retail electric customers, the Company suggests the proposed changes would have no more than a minimal impact on the value of customers' solar investments or their incentives to invest in distributed solar. Public Service also states this rate case does not involve any proposed changes to the tariffs for net metering, photovoltaic service, or Community Solar Gardens. Public Service further argues that, while the Company's test year includes transmission investment expected to go into service in 2014 and 2015, the need for such investment is not at issue.

41. On August 18, 2014, TASC filed a Motion for Leave to Reply to Public Service's response. We find good cause to grant this motion.

42. TASC's reply argues the Company concedes that TASC has an interest in this proceeding. According to TASC, the Company merely disputes whether the proposed decoupling proposal will have a substantial and material impact on the investments of TASC's members and the investments of customers who install and own distributed solar. In addition,

TASC notes that no other solar companies, associations, or solar ratepayers have intervened in the proceeding.

43. We grant TASC's intervention provided that its participation as a party is consistent with its interests in distributed solar resources as set forth in its petition. Specifically, we agree that TASC has an interest in the Company's revenue decoupling proposal. The Commission's resolution of this particular issue could substantially affect TASC's interests in promoting distributed solar resources. We further agree that no other party will adequately represent TASC's particular interests in these consolidated proceedings. TASC may conduct discovery, present witnesses, and conduct cross-examination regarding the proposed revenue decoupling mechanism.

44. Concerning cost recovery of transmission investments, we agree with Public Service that the need for transmission investment to be included in the proposed revenue requirement is not at issue. TASC may not conduct discovery in this rate case as a means to gather information in support of its position that installations of distributed solar resources generally lower the need for transmission investments.

f. Ms. Leslie Glustrom as *Pro Se*

45. On July 18, 2014, Ms. Leslie Glustrom, a residential electric customer, filed a Motion to Intervene in Proceeding No. 14AL-0660E as *pro se*. Ms. Glustrom argues that her past participation in Commission proceedings shows she has a strong interest in and a unique historical knowledge of the issues being considered in this rate case proceeding. She further argues that no other party, including the OCC, will be able to adequately represent her interests. For example, she states that she took positions opposing the investments in fossil fuel power plants that drive the rate increase at issue here. She also argues a large divergence exists between

her positions and those taken by the OCC in a wide variety of proceedings. In addition, Ms. Glustrom offers that her knowledge on climate change issues is relevant to this proceeding and cannot be represented adequately by other parties. Furthermore, Ms. Glustrom explains that she is a customer of Public Service and that her utility bill causes her household's budget to be a matter of serious financial concern.

46. Public Service recommends that the Commission deny her intervention because she has not demonstrated this case may substantially affect her pecuniary or tangible interests or that her interest would not otherwise be represented adequately by other parties. Public Service further argues that questions about whether the Company has taken the appropriate actions to address climate change have been addressed in previous proceedings and are therefore beyond the scope of this rate case. Public Service offers that the Commission could permit Ms. Glustrom to participate as an *amicus curiae* in this proceeding

47. On August 4, 2014, Ms. Glustrom filed a Motion for Leave to Reply to Response in Opposition to Motion. We grant this motion.

48. In her reply, Ms. Glustrom argues she has provided the Commission with extensive information showing where her positions have diverged from those of the OCC, and Public Service has done nothing to rebut those assertions. She further argues the Commission's Rules limit *amicus curiae* participation to providing legal argument and not to providing policy arguments. Ms. Glustrom explains that she seeks party status to conduct discovery in this case and to put forward a case based on that discovery.

49. Ms. Glustrom fails to demonstrate pecuniary or tangible interests not shared by other residential ratepayers. We agree with Public Service that she has not shown that other parties in this proceeding cannot represent her interests in this matter. While Ms. Glustrom

indicates past divergence from positions taken by the OCC, these examples fail to demonstrate how her interests would differ from other similarly situated residential customers in this proceeding. In addition, she does not allege bad faith, collusion, or negligence on the part of the OCC. With respect to the base rate matters and the proposed CACJA rider, Ms. Glustrom's interests are represented adequately by other parties, including Boulder, Staff, the OCC, and EOC. Likewise, with respect to her areas of experience and her concerns about climate change, we find many of these issues are beyond the scope of this proceeding, and other parties in this proceeding will represent her stated interests to the extent those matters are relevant. Further, we do not find her arguments compelling in showing why the OCC's representation is not adequate for purposes of this proceeding.

3. Parties

50. The parties in this matter shall be: Public Service; Staff; the OCC; Boulder; CEC; Climax and Evraz; Wal-Mart; Kroger; FEA; CHECC; EOC; SWEEP; CEA; WRA; and TASC. In addition to conducting discovery, presenting witnesses, and conducting cross-examination as discussed above, and consistent with this Decision and Commission rules, parties may present legal, policy, and other arguments and recommendations in briefing.

D. Motions to Appear *Pro Hac Vice*

51. Rule 1201(a) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1 governs admissions to appear before the Commission for attorneys not licensed to practice in Colorado. This rule in turn refers to CRCP Rule 222.1, which lists the requirements that out of state attorneys must meet in order to appear in Colorado.

1. Kroger

52. On July 31, 2014, Kurt Boehm, Esquire and Jody Kyler Cohn, Esquire, each filed a Motion for Admission *Pro Hac Vice* to appear as attorneys for Kroger.

53. Mr. Boehm is an attorney in good standing in the states of Ohio and Kentucky. Ms. Kyler Cohn is also an attorney in good standing in the states of Ohio and Kentucky. Notarized affidavits were attached to their motion.

54. We find that the motions contain the statements and information required by CRCP 221.1, that the motions state good cause, and that no party will be prejudiced if the motions are granted. We therefore grant the motions on the condition that counsel for Kroger agrees to appear in person at prehearing conferences and hearings, and that Kroger registers as a filer in the Commission's E-Filing System for the purpose of accepting service in these consolidated proceedings.

2. CHECC

55. On August 11, 2014, Mark Sundback, Esquire; William Rappolt, Esquire; Kenneth Wiseman, Esquire; and Allison Hellreich, Esquire each filed a Motion for Admission *Pro Hac Vice* to appear as counsel for CHECC.

56. Messrs. Sundback and Wiseman are attorneys in good standing in the District of Columbia. Mr. Rappolt is an attorney in good standing in the State of Maryland. Ms. Hellreich is an attorney in good standing in the State of New York. Notarized affidavits were attached to their motions.

57. We find that the motions contain the statements and information required by CRCP 221.1, that the motions state good cause, and that no party will be prejudiced if the motions are granted. We therefore grant the motions on the condition that counsel for CHECC

agrees to appear in person at prehearing conferences and hearings and that CHECC registers as a filer in the Commission's E-Filing System for the purpose of accepting service in these consolidated proceedings.

3. FEA

58. On August 13, 2014, Lieutenant Colonel John Degnan, Esquire and Captain John Thomas Jernigan, Esquire, each filed a Motion for Admission *Pro Hac Vice* to appear as counsel for FEA.

59. Lieutenant Colonel Degnan is an attorney in good standing in the State of Pennsylvania. Captain Jernigan is an attorney in good standing in the State of Ohio. Notarized affidavits were attached to their motions.

60. We find that the motions contain the statements and information required by CRCP 221.1, that the motions state good cause, and that no party will be prejudiced if the motions are granted. We therefore grant the motions on the condition that counsel for FEA agrees to appear in person at prehearing conferences and hearings and that FEA registers as a filer in the Commission's E-Filing System for the purpose of accepting service in these consolidated proceedings.

E. Motions for Protective Orders

61. On June 17, 2014, Public Service filed a motion for a protective order with its filing of Advice Letter No. 1672 in Proceeding No. 14AL-0660E. Public Service seeks to protect as highly confidential information, certain cost estimates for its Cherokee combined cycle generation project, the Hayden 1 and 2 Selective Catalytic Reduction (SCR) project, and the Pawnee SCR and scrubber project. The Company also seeks to protect certain retail sales figures, regression models, and customer counts as highly confidential. Public Service wants to

restrict access to all of this information to only the Commissioners, the Commission's staff (advisors and Staff), the OCC, and their attorneys.

62. Concerning the project costs, Public Service states that it wants to avoid the potential for increasing the costs of its CACJA projects through the inadvertent release of the information. For instance, Public Service explains that contract vendors could glean the amounts that the Company has budgeted towards the work they are performing and the Company could therefore potentially suffer adverse commercial harm if the information were obtained by the contractors. Public Service further argues the cost information could be used by its competitors for a competitive advantage and there likely would be few benefits, if any, from the disclosure of this information at this time, either to the public or to a broader set of parties.

63. Concerning the sales and customer information, Public Service states the data contains both proprietary customer business information as well as its customers' personal information.

64. The Company states that it has provided a proposed nondisclosure agreement and an affidavit containing the identification of the persons with access to the information and the proposed duration for which the information will remain protected as highly confidential.

65. Pursuant to Rule 1400(b) of 4 CCR 723-1, response time to the motion ran for 14 days. No party filed a response, and it therefore appears to be unopposed.

66. We find good cause to grant this motion for protective order. We agree with Public Service that the requested protections are appropriate and reasonable, consistent with Commission rules, practices, and policies. Access to the information addressed in the motion shall be limited to the Commissioners, Commission advisors, Staff, employees of the OCC assigned to these consolidated proceedings, and their attorneys. Disclosure to the employees of

the OCC and the assistant attorneys general assigned to this proceeding shall be conditioned upon the filing of the nondisclosure agreement attached to the motion.[8]

67. Also, on August 7, 2014, Public Service filed a second motion for a protective order. By this motion, Public Service seeks to protect as highly confidential additional sales figures and customer information requested pursuant to Staff's audit requests.

68. Public Service explains that the response to the audit request is voluminous, containing approximately 1.5 million rows of unique combinations of customers and premises for 48 months of sales and demand usage. Public Service requests the Commission issue an order restricting access to this information to only Staff and the OCC. Public Service states that the information will be hand delivered to both Staff and the OCC on an external memory flash drive and that Staff and the OCC are expected either to destroy or to return the information at the conclusion of the proceeding.

69. Public Service provided a proposed nondisclosure agreement and an affidavit containing the identification of the persons with access to the information and the proposed duration for which the information will remain protected as highly confidential.

70. Pursuant to Rule 1400(b), response time to the motion would run for 14 days or through August 21, 2014. However, we listed the motion on the agenda for the August 20, 2014 Commissioners' Weekly Meeting to indicate that we intended to take up the merits of the motion at that time. No responses were filed prior to the date this Decision was adopted.

71. We waive the remaining day of response time to the motion and find good cause to grant the motion. We agree with Public Service that individual customer and energy-usage

[8] Members of the Commission's staff sign and keep on file a nondisclosure agreement pursuant to Rule 1100(h) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

information should be protected as highly confidential information, consistent with Commission rules and data privacy policies. We further agree that distribution of the information should be limited at this time to only Staff and the OCC. Staff and the OCC are instructed either to destroy or to return the information at the conclusion of the proceeding. Disclosure of the information to the employees of the OCC and the assistant attorneys general assigned to this proceeding shall be conditioned upon the filing of the nondisclosure agreement attached to the motion.[9]

F. Pre-Hearing Conference

72. We will schedule a prehearing conference in this matter for September 3, 2014 for the purpose of establishing a procedural schedule.

73. Prior to this prehearing conference, Public Service is directed to confer with the parties and to file, no later than noon on Tuesday, September 2, 2014, a proposed consensus procedural schedule that includes deadlines for the filing of written testimony, deadlines related to discovery, dates for an evidentiary hearing, deadlines for the filing of pre-hearing motions and response times, and a deadline for the filing of any stipulations and settlement agreements. Parties are also instructed to provide suggested dates by which the Commission will schedule at least one public comment hearing in Denver, Colorado.

74. In the event that it is not possible to arrive at a consensus proposal, Public Service and the parties are instructed to file alternative schedules no later than noon on Tuesday, September 2, 2014.

75. As discussed below, the Commission must issue a decision in this consolidated matter prior to February 13, 2015; otherwise, if the Commission does not establish new rates

[9] Members of the Commission's staff sign and keep on file a nondisclosure agreement pursuant to Rule 1100(h) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

before the expiration of the suspension period, the tariff pages filed by Public Service under Advice Letter No. 1672 may become effective.

76. Due to the February 13, 2015 deadline and the December holidays, it is preferable for the Commission to conclude its hearings no later than December 5, 2014.[10] However, the Commission will consider at the prehearing conference proposals to allow for hearings to be held in early 2015 but no sooner than January 12, 2015. Any proposal for hearings in early 2015 shall provide at least eight weeks from the conclusion of hearings for the Commission to issue its written decision establishing new rates and thereby suspending permanently the tariff pages filed under Advice Letter No. 1672.

77. In addition, any proposed procedural schedule should address discovery procedures, such as whether the Commission's Rules of Practice and Procedure would apply without modification or whether the Commission should adopt alternative procedures.

G. Further Suspension of Tariffs

78. By Decision No. C14-0807, issued July 15, 2014, the Commission set the tariffs filed under Advice Letter No. 1672 for hearing and suspended their effective date to November 15, 2014 pursuant to § 40-6-111(1), C.R.S.

79. The Commission may, in its discretion, suspend the effective date of the tariff page(s) for an additional 90 days.

80. We find good cause to extend the proposed effective date of the tariff pages an additional 90 days, or until February 13, 2015.

[10] By Decision No. C14-0807, the Commission notified Public Service and potential parties that it anticipated the evidentiary hearing to be scheduled for December 2 through 5, 2014.

H. Referral of Discovery Disputes and Motions for Protective Orders

81. In the interest of procedural efficiencies, we refer to an Administrative Law Judge discovery disputes in this matter and any further motions for protective orders filed by Public Service or any other party.[11]

II. ORDER

A. The Commission Orders That:

1. The proposed effective date, July 18, 2014, of the tariff pages filed by Public Service Company of Colorado (Public Service) with Advice Letter No. 1672 is suspended an additional 90 days, or until February 13, 2015 pursuant to § 40-6-111(1), C.R.S.

2. The Motion for Protective Order filed by Public Service on June 17, 2014 in Proceeding No. 14AL-0660E is granted.

3. The Application for Approval of Arapahoe Decommissioning and Dismantling Plan filed by Public Service on June 23, 2014 in Proceeding No. 14A-0680E is set for hearing before the Commission *en banc*.

4. The Motion to Consolidate Proceedings filed by Public Service on June 23, 2014 in Proceeding No. 14A-0680E and on June 24, 2014 in Proceeding No. 14AL-0660E is granted. Proceeding No. 14AL-0660E shall serve as the primary proceeding.

5. The Motion to Intervene filed by Ms. Leslie Glustrom on July 18, 2014, in Proceeding No. 14AL-0660E is denied, consistent with the discussion above. The Motion for Leave to Reply to Response in Opposition to Motion to Intervene filed by Ms. Glustrom on August 4, 2014 is granted.

[11] On August 18, 2014, Public Service filed a third motion for protective order. The ALJ assigned to this matter shall rule on this motion.

6. The Motion to Intervene filed by Energy Outreach Colorado on July 21, 2014 in Proceeding No. 14AL-0660E is granted.

7. The Petition for Leave to Intervene filed by the City of Boulder on July 29, 2014 in Proceeding No. 14AL-0660E is granted.

8. The Petition for Leave to Intervene filed by the Southwest Energy Efficiency Project on July 30, 2014 in Proceeding No. 14AL-0660E is granted, consistent with the discussion above.

9. The Motion to Intervene filed by the Colorado Energy Consumers Group (CEC) on July 24, 2014 in Proceeding No. 14A-0680E is granted. The Motion to Intervene filed by CEC on August 1, 2014 in Proceeding No. 14AL-0660E is granted.

10. The Petition to Intervene filed by Climax Molybdenum Company and CF&I Steel, LP, doing business as Evraz Rocky Mountain Steel on July 31, 2014 in Proceeding No. 14AL-0660E is granted.

11. The Motion to Intervene filed by Wal-Mart Stores, Inc. and Sam's West, Inc. on July 31, 2014 in Proceeding No. 14AL-0660E is granted.

12. The Motion to Intervene filed by The Kroger Company (Kroger) on July 31, 2014 in Proceeding No. 14AL-0660E is granted.

13. The Motion for Admission *Pro Hac Vice* filed on July 31, 2014 by Kurt Boehm, Esquire and Jody Kyler Cohn, Esquire, to appear as attorneys for Kroger is granted, consistent with the discussion above.

14. The Motion for Leave to Intervene filed by Clean Energy Action (CEA) on August 5, 2014 in Proceeding No. 14AL-0660E is granted, consistent with the discussion above.

The Motion for Leave to Reply to Response in Opposition to Motion to Intervene filed by CEA on August 18, 2014 is granted.

15. The Motion to Intervene filed by the Federal Executive Agencies (FEA) on August 5, 2014 in Proceeding No. 14AL-0660E is granted.

16. Response time to the Motion for Protective Order filed by Public Service on August 7, 2014 in Proceeding No. 14AL-0660E is waived and the motion is granted.

17. The Motion to Intervene filed by the Colorado Healthcare Electric Coordinating Council (CHECC) on August 11, 2014 in Proceeding No. 14AL-0660E is granted.

18. The Motion for Admission *Pro Hac Vice* filed on August 11, 2014 by Mark Sundback, Esquire, to appear as attorney for CHECC is granted, consistent with the discussion above.

19. The Motion for Admission *Pro Hac Vice* filed on August 11, 2014 by William Rappolt, Esquire, to appear as attorney for CHECC is granted, consistent with the discussion above.

20. The Motion for Admission *Pro Hac Vice* filed on August 11, 2014 by Kenneth Wiseman, Esquire, to appear as attorney for CHECC is granted, consistent with the discussion above.

21. The Motion for Admission *Pro Hac Vice* filed on August 11, 2014 by Allison Hellreich, Esquire, to appear as attorney for CHECC is granted, consistent with the discussion above.

22. The Petition for Leave to Intervene filed by Western Resource Advocates on August 11, 2014 in Proceeding No. 14AL-0660E is granted, consistent with the discussion above.

23. The Motion to Intervene filed by The Alliance for Solar Choice (TASC) on August 11, 2014 in Proceeding No. 14AL-0660E is granted, consistent with the discussion above. The Motion for Leave to Reply to Response in Opposition to Motion to Intervene filed by TASC on August 18, 2014 is granted.

24. The Motion for Admission *Pro Hac Vice* filed on August 13, 2014 by Lieutenant Colonel John Degnan, Esquire, to appear as attorney for FEA is granted, consistent with the discussion above.

25. The Motion for Admission *Pro Hac Vice* filed on August 13, 2014 by Captain John Thomas Jernigan, Esquire, to appear as attorney for FEA is granted, consistent with the discussion above.

26. A prehearing conference in this matter is scheduled on the following date and time:

DATE: September 3, 2014

TIME: 10:00 a.m. through 12:00 p.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

27. Consistent with the discussion above, Public Service is directed to confer with the parties and to file, no later than noon on Tuesday, September 2, 2014, a proposed consensus procedural schedule. In the event that it is not possible to arrive at a consensus proposal, Public

Service and the parties are instructed to file alternative schedules no later than noon on Tuesday, September 2, 2014.

28. Discovery disputes in these consolidated proceedings and any further motions for protective orders are referred to an Administrative Law Judge.

29. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING August 20, 2014.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners

ATTEST: A TRUE COPY

Doug Dean,
Director