Decision No. R19-0689-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19AL-0290E

IN THE MATTER OF ADVICE LETTER NO. 1798 FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO IMPLEMENT SECONDARY VOLTAGE TIME-OF-USE ELECTRIC VEHICLE SERVICE TO BECOME EFFECTIVE JUNE 24, 2019.

INTERIM DECISION OF ADMINISTRATIVE LAW JUDGE ROBERT I. GARVEY DENYING UNOPPOSED MOTION SEEKING MODIFICATION OF DECISION NO. R19-0625-I

Mailed Date: August 15, 2019

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A. It Is Ordered That: 33

I. STATEMENT

1. On May 24, 2019, Public Service Company of Colorado (Public Service) filed with the Colorado Public Utilities Commission (Commission) Advice Letter No. 1798-Electric with tariff sheets establishing a Secondary Voltage Time-of-Use Electric Vehicle Service (Schedule S-EV) with Direct Testimony of witnesses Jack Ihle and Steven Wishart. The proposed effective date of the tariff filed with Advice Letter No. 1798-Electric is June 24, 2019.

2. Schedule S-EV offers an optional service that would be available to large, non-residential customers for charging their own electric vehicles (EVs) or providing charging services to third parties for a fee. The tariff sheets set forth rates including a monthly service and facilities charge and a monthly demand charge, as well as per kilowatt hour charges for "On Period," "Off Period," and "Called Critical Peak Hours." Public Service states that the creation of Schedule S-EV will not directly affect any other service or customer class.

3. On June 13, 2019, by Decision No. C19-0491, the effective date of the tariff sheets was suspended and Proceeding No. 19AL-0290E was referred to an Administrative Law Judge (ALJ).

4. On June 13, 2019, Trial Staff of the Commission (Staff) timely filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1403(b), and Request for Hearing. The intervention is of right, and Staff is a party in this matter.

5. On June 19, 2019, by Decision No. 19-0533-I, a prehearing conference was scheduled for July 16, 2019.

6. On June 26, 2019, ChargePoint Inc. (ChargePoint) timely filed its Motion to Intervene and Entry of Appearance. ChargePoint is an EV charging network with existing customers and prospective customers in Colorado. ChargePoint argues that their interests will not be adequately represented by other parties to the proceeding.

7. On June 27, 2019, the City and County of Denver (Denver) timely filed its Motion to Intervene. Denver states it is a legally and regularly created, established, organized and existing home rule city and county, municipal corporation, and political subdivision. Denver contends it should be allowed to intervene due to the rate impacts the tariff will have on its EV fleet and on public charging rates.

8. On July 3, 2019, the Colorado Office of Consumer Counsel (OCC) filed its Notice of Intervention of Right, Entry of Appearance, and Request for Hearing. The OCC is an intervenor as of right and a party in this proceeding. The OCC listed a series of issues they wish to investigate.

9. On July 5, 2019, Tesla Inc. (Tesla) filed its Motion to Intervene. Tesla owns and operates charging stations in Colorado. Tesla states it has a substantial, pecuniary, and tangible business interest in the proposed tariff.

10. On July 9, 2019, the City of Boulder (Boulder) timely filed its Petition for Leave to Intervene. Boulder states that it is a regularly created, established, organized, and existing home rule city and municipal corporation. Boulder contends it should be granted an intervention and describes how the subject matter of this proceeding will directly affect the pecuniary or other tangible interests of Boulder's EV fleet.

11. On July 11, 2019, Natural Resources Defense Council (NRDC) and Southwest Energy Efficiency Project (SWEEP) timely filed their Petition for Leave to Intervene. NRDC is a

national non-profit organization dedicated to protection of the environment. SWEEP is a non-profit public interest group that works to advance energy efficiency. NRDC and SWEEP contend they should be granted an intervention due to a tangible interest in reducing reliance on petroleum, accelerating transportation electrification, and helping the state capture the economic and environmental benefits of electrification.

12. On July 11, 2019, the Colorado Energy Office (CEO) timely filed its Notice of Intervention as of Right. The CEO is an intervenor as of right and a party in this proceeding.

13. On July 11, 2019, Western Resource Advocates (WRA) filed its Motion for Leave to Intervene. WRA states that the above captioned proceeding may substantially affect its pecuniary or tangible interests. WRA states the interests that may be "touched" are human health, air quality, and the health and beauty of Colorado's lands.

14. On July 11, 2019, the Regional Transportation District (RTD) filed its Entry of Appearance and Motion to Intervene. RTD states it has a substantial and direct interest in this proceeding due to operating a large fleet of electric buses.

15. On July 12, 2019, Electrify America LLC (Electrify America) filed its Motion to Intervene and Appearance of Counsel. Electrify America is an operator of an EV charging network in Colorado. Electrify America states that its interests cannot be represented adequately by any other party.

16. On July 12, 2019, Electrify America filed its Request for Telephonic Participation. Electrify America states that its counsel is located outside of the State of Colorado and requests to appear by telephone for the prehearing conference scheduled on July 16, 2019. Electrify America states that Public Service does not object to the request.

17. On July 12, 2019, Public Service filed its Motion for Proposed Procedural Schedule and Request to Vacate Prehearing Conference (Motion). The Motion states that the parties who have intervened in the proceeding as of the date of the filing of the Motion have agreed to a procedural schedule. If the procedural schedule is acceptable to the undersigned ALJ, the parties also request that the prehearing conference scheduled for July 16, 2019, be vacated.

18. On July 15, 2019, Colorado Energy Consumers (CEC) filed its request for permissive intervention. CEC asserts that this proceeding will have a direct and substantial impact on its interests since some of its members may be participating in the proposed optional rate schedule offering, and thus have an interest in how the rate is designed, its overall value relative to alternatives, and the related proposed terms of service.

19. On July 15, 2019, Vote Solar; Colorado Latino Forum (CLF); Elyria and Swansea Neighborhood Association Globeville (ESNA); Elyria-Swansea Coalition (GES Coalition); and Unite North Metro Denver (UNMD) (collectively, the Environmental Justice Coalition) filed their Motion to Intervene.

20. Vote Solar states it is a non-profit organization working to repower the United States with clean energy by making solar power more accessible and affordable through effective policy advocacy.

21. The CLF is a non-profit organization dedicated to increasing the political, social, educational, and economic strength of Latinas and Latinos.

22. The ESNA is a registered neighborhood organization recognized by Denver, with prescribed and registered boundaries. (North: County Line; South: 40th Avenue; East: Colorado Boulevard; and West: Platte River).

23. The Globeville, GES Coalition is a group of resident leaders, community organizers, and advocates that work to mitigate the impacts of rapid development and to protect community health and well-being in the Globeville, Elyria, and Swansea neighborhoods.

24. UNMD is a neighborhood association established to unite the northern part of Denver.

25. The Environmental Justice Coalition states that it has a direct and tangible interest in this proceeding, but does not state how each member of the coalition has a direct and tangible interest in this proceeding. Nor does the intervention state the direct and tangible interest of the Environmental Justice Coalition. The intervention only states that it seeks to "spur the growth of EVs in Colorado."[12]

26. On July 25, 2019, by Decision No. R19-0633-I, the proposed procedural schedule was adopted, the interventions by right of Staff, the OCC, and the CEO were noted, and the interventions of ChargePoint, Denver, Tesla, Boulder, RTD, Electrify America, and CEC were granted, resulting in a total of ten intervenors in this proceeding. Additionally, the interventions of NRDC, SWEEP, WRA, CLF, ESNA, GES Coalition, UNMD, and Vote Solar were denied for the failure to state a pecuniary or tangible interest in accordance with the requirements of Commission Rule 1401(c) of the Rules of Practice and Procedure 4 *Code of Colorado Regulations* (CCR) 723-1.

27. On July 29, 2019, NRDC, SWEEP, WRA, CLF, ESNA, GES Coalition, UNMD, and Vote Solar (collectively, the Environmental Groups), filed their Unopposed Motion Seeking Modification of Decision No. R19-0625-I (Motion Seeking Modification).

[1] Environmental Justice Coalition Intervention at ¶ 9.

[2] The ALJ found this statement in the intervention to be the closest to an interest in the proceeding.

II. THE HISTORY OF THE PERMISSIVE INTERVENTIONS BY ENVIRONMENTAL GROUPS.

28. At the outset, the undersigned ALJ does not believe that an intervenor who has failed to show that it has a tangible or pecuniary right and fails to explain why their concerns are not addressed by the OCC is allowed to make new arguments in what is titled a motion for modification of a Commission decision, but is in reality a new motion. Even though the Motion Seeking Modification goes beyond the original arguments, they will still be addressed. It is important for these groups, if they would like to participate in Commission proceedings, to understand what is necessary to be allowed to permissively intervene.

29. At various times throughout the Motion Seeking Modification, the Environmental Groups make arguments collectively without defining how each group is part of the argument. The undersigned ALJ believes each party must state why its own motion to intervene should be granted. Yet the Environmental Groups filed collectively. The ALJ is left to assume that they all equally share the argument. Despite this failure, the arguments as a group shall be viewed as equally applying to all without any evidence to support that proposition.

30. The first argument made as a group, is that just because environmental groups have been allowed to intervene in prior proceedings, this somehow grants them a right to intervene in the above captioned proceeding. On its face, this is a flawed argument.

31. At no point in the denial of the intervention of the Environmental Groups was it stated that environmental groups have not ever been granted an intervention. The only logical basis for this point is to argue that this previous grant of intervenor status has some bearing on the granting of the intervention in the instant case as to all of the Environmental Groups.

32. Each proceeding is separate and distinct from another. The granting of a motion or request to intervene in a prior proceeding has no precedential effect in a future proceeding. The

parties provide no case law establishing otherwise. This argument also is made without any information about the cases cited in support of this argument.

33. The first case relied upon by the Environmental Groups, *Friends of Black Forest Reg'l Park, Inc. v. Bd. of County Comm'rs of the County of El Paso*, 80 P.3d 871, 877 (Colo. App. 2006), *cert. denied* (Dec. 1, 2003) (*citing Sierra Club v. Morton*, 405 U.S. 727 (1972)), is cited for the proposition that "environmental and conservation interests have long been considered sufficient to confer standing."[3] The Environmental Groups contend this case supports their intervention in the above captioned proceeding.

34. *Friends of Black Forest* involved a District Court case concerning the use of a portion of the Black Forest Regional Park for a road in El Paso County.

35. Contrary to the assertion of the Environmental Groups, the question addressed by the Court was not if environmental and conservation interests are considered sufficient to confer standing. Rather, the argument of the Friends of Black Forest was that the proposed road would "adversely affect the aesthetics of the park and erode the property values of adjoining landowners." *Id*. The Court found that there was standing and it was distinguishable from another case for the following reason:

> In *Brotman*, the [S]upreme [C]ourt concluded that the plaintiff did not have an imminent injury in fact because he sought to enjoin the performance of an agreement between a landowner and the agency that *might* create an interference with the land. Here, the construction of the road through the subject property would harm plaintiffs' aesthetic, ecological, and property interests. This direct injury satisfies the standing requirement.

Id. (emphasis in original).

[3] Motion Seeking Modification, p. 5.

36. There are many reasons why this case does not support the argument of the Environmental Groups. The first and most obvious reason is that *Friends of Black Forest* is not an administrative case. It was a civil suit to determine the validity of an easement and at question was a legal right of standing. This is an administrative proceeding where a permissive intervention is in question. The concept of standing is not at issue. The legal standard to establish standing differs from the legal standard to permissively intervene in an administrative proceeding. But, even if standing was somehow relevant to the instant proceeding, the Environmental Groups appear to misunderstand why standing was found by the Court.

37. The Court in *Friends of Black Forest* did not hold that simply having "environmental and conservation interests" conferred standing.[4] Rather, the Court held that standing was established due to there being an injury in fact or a direct injury, as opposed to an indirect injury. This distinction is consistent with cases where indirect or incidental injuries did not confer standing.[5]

38. It appears that the Environmental Groups cite *Friends of Black Forest* to assert that Colorado Courts have conferred a special privilege to automatically grant an intervention without having to meet the statutory requirement of a direct injury – specifically, a substantially affected pecuniary or tangible interest. This is simply disingenuous and wrong.

39. The second case cited in support of this proposition is *Rocky Mountain Animal Defense v. Colo. Div. of Wildlife*, 100 P.3d 508 (Colo. App. 2004). This case involved a declaratory judgment as to the validity of an exception to a voter approved amendment prohibiting the use of poisons to control or eliminate wildlife. *Id*. at 511-12.

[4] This was never stated as a reason for the denial of the intervention in this matter.

[5] *See Brotman v. E. Lake Creek Ranch LLP*, 31 P.3d 886, 890,891 (Colo. 2001), and *Wimberly v. Ettenberg*, 194 Colo. 163, 168, 570 P2d. 535, 539, (1977).

40. Once again, this case is not an administrative case and the Court held that there needed to be a direct injury in fact to confer standing. Specifically, the Court found:

> Members sustained injuries to their interests in the value of their property and in maintaining a safe environment as a result of poisons used against prairie dogs within their communities.

Id. at 512.

41. If these cases have any relevance to this proceeding, the Environmental Groups fail to show any direct injury in fact in the instant case which was essential to the finding in these cases.[6]

42. Additionally, the Environmental Groups argue they have been "repeatedly recognized" in Commission proceedings "focused on tariff development or rate design."[7] In support of this assertion, the following cases are listed: 18A-0676E, 18AL-0852E, 17AL-0818E, 16A-0546E, 16AL-0048E, 14AL-0393E, 14AL-0660E, 09AL-299E, 11AL-947E, 06S-234EG, and 04S-164E. The list of proceedings is presented without any explanation as to if they are similar to the instant case or even which members of the group intervened. Without any information at all beyond the proceeding numbers, the Environmental Groups reach the astounding conclusion that this list supports the premise that to deny their intervention in the instant case would be "arbitrary and capricious."[8]

43. This argument has no merit as it is made without any reference to any aspect of the instant case, but to understand exactly how little merit this argument has, one only has to

[6] There are several other reasons why these cases are not relevant to any finding that the Environmental Groups have a tangible interest in this matter, including but not limited to: (1) the groups in the cited cases demonstrated a legally protected interest, unlike the parties in the instant case; and (2) those cases did not have an organization similar to the OCC as a party, nor were the groups seeking standing required to show that any such organization did not adequately represent their interests.

[7] Motion Seeking Modification p. 5.

[8] *Id.*

look at some of these cases and the participation of each group. The Commission has long found the prior allowance of an intervention has no bearing on an intervention in a later case. The Commission is not subject to the doctrine of *stare decisis. Proceeding No. 11A-510E, Decision No. C11-1163 issued October 31, 2011, ¶17.*

44. The first proceeding used by the Environmental Groups is Proceeding No. 18A-0676E.[9] Only one of the Environmental Groups intervened in that proceeding, WRA.

45. Proceeding No. 18A-0676E was an application for Time-of-Day Rate Pilot. Proceeding No. 18A-0676E is distinguishable from the underlying proceeding for two reasons. First, it concerned rates for an "opt-out only" pilot program, not an optional rate. Second, Proceeding No. 18A-0676E involved residential rates, unlike this case concerning a rate for large commercial, non-residential customers.

46. The single most important issue to the ALJ during the hearing and the Commission on exceptions, was that the treatment of low-income customers of the utility, was not even addressed by WRA in pre-filed testimony or in their Statement of Position (SOP). WRA's testimony, cross-examination of witnesses, and SOP mainly concerned the treatment of rooftop solar users. The issue of low-income customers pointed out by the ALJ, caused the Commission to reject the entire program. On exceptions, Commissioner John Gavin provided this scathing commentary of the advocate community:

> I was also surprised to see that our advocate community largely ignored the issue of negative impacts to the low-income customer segment. As an example, intervenors were more concerned about impacts to net-metered rooftop solar customers. I call on those in our advocate community to do some serious soul searching about this oversight. We must be mindful to carefully consider the public interest of all consumer groups, especially including the low to

[9] The undersigned was the ALJ who heard this hearing. There were a total of six intervenors, only three were permissive.

> moderate-income segment where a monthly electric bill can be a significant portion of a customer's monthly discretionary spending.

Decision No. C19-0590 issued July 15, 2019 paragraph 2, Commissioner Gavin Specially Concurring.

47. The second proceeding cited is Proceeding No. 18AL-0852E.[10] This proceeding involved a proposed line extension tariff for Public Service. Four parties filed to permissively intervene in the proceeding. There was no objection to any intervention by Public Service. Two of the parties had their interventions denied due to a lack of tangible or pecuniary interests.[11]

48. The only member of the Environmental Groups who intervened was WRA. The tariff filing in Proceeding No. 18AL-0852E concerned line extensions for residential and small business developments and proposed to change the method and amount of contributions ratepayers would make in line extensions. Proceeding No. 18AL-0852E was a tariff proceeding which affected classes other than large commercial. The instant proceeding, however, only effects large commercial customers.

49. WRA provided testimony in the proceeding but did not object to any aspect of the proposed tariff. During the hearing, WRA did not cross-examine any of Public Service's witnesses. WRA filed a 17-page SOP arguing for no changes in the tariff proposed by Public Service.

50. In Proceeding No. 18AL-0852E, there is no evidence that WRA provided anything that an *Amicus* Brief giving support to the tariff would not have provided. They did not

[10] The undersigned ALJ also heard this case.

[11] Decision No. R19-0148-I issued February 7, 2019.

object to any aspect of the proposed tariff, yet WRA's intervention undoubtedly increased the legal costs of Public Service, which then passes these costs on to its ratepayers.

51. In Proceeding No. 17AL-0818E,[12] there is no evidence that any party intervened. It is unclear why the Environmental Groups include it in their list.

52. In Proceeding No. 16A-0546E,[13] three members of the Environmental Groups, WRA, Vote Solar, and SWEEP, intervened and the interventions were granted. This proceeding concerned an application to implement a revenue decoupling mechanism for residential and small commercial customers. Yet again, this was not a proceeding concerning only large commercial customers, as in the instant case. The filing of Proceeding No. 16A-0546E was part of a settlement agreement in Proceeding No. 14AL-0660E, in which both WRA and SWEEP were parties.

53. All three parties participated in the proceeding providing testimony, some cross-examination (varied by the party), and an SOP. All three parties provided information helpful to the Recommended Decision in the proceeding.

54. Proceeding No. 16AL-0048E was a Public Service Phase II rate case which was originally referred to the undersigned ALJ but later referred back to the Commission as part of a global settlement of three cases. Three members of the Environmental Groups, WRA, Vote Solar, and SWEEP, intervened and the interventions were granted. This Phase II rate case was for all rate classes, including residential, unlike the instant proceeding which does not include small commercial or residential.

[12] This Proceeding was not referred to an ALJ and never went to hearing.

[13] The undersigned was the ALJ of record in this proceeding.

55. Because Proceeding No. 16AL-0048E became part of a global settlement, it is unclear of the exact participation of each party.

56. Proceeding No. 14AL-0393E[14] was a Phase I rate case filed by Black Hills Colorado Electric, LLC (Black Hills) that applied to all rate classes including residential and small commercial. The only member of the Environmental Groups who intervened was WRA.

57. WRA did not file any testimony in the proceeding. WRA cross-examined two Black Hills witnesses for a short time consisting of three questions for one witness,[15] and 14 questions for a second witness[16] who was not examined by any other party or the ALJ who conducted the hearing. Further, counsel for WRA did not attend the entirety of the hearing.[17] Nor did WRA file an SOP or Exceptions to the Recommended Decision.

58. Proceeding No. 14AL-0660E was a Public Service Phase I rate case. Unlike the instant case, Proceeding No. 14AL-0660E applied to all rate classes. Two members of the Environmental Groups, WRA and SWEEP, intervened and the interventions were granted. Both interventions, however, were limited to specific issues. WRA's intervention was denied as to one of its proposed issues. Although this proceeding was not referred to an ALJ and was ultimately settled, Answer Testimony was filed prior to the settlement. WRA and SWEEP did not file any such testimony. Nor was WRA or SWEEP listed as a settling party in the Settlement Agreement.

[14] This proceeding was assigned to the undersigned ALJ.

[15] Hearing Transcript Vol I, P. 72-76.

[16] Hearing Transcript Vol I, P. 156-161.

[17] *See* Hearing Transcript Vol III, p. 170, l. 6-7. The undersigned believes that counsel for WRA failed to appear for the last two days of the hearing but entries of appearance were not made each day. It is clear based on the transcript that counsel was not present when the proceeding ended.

According to a footnote in the Settlement Agreement, SWEEP took no position and WRA neither opposed nor supported the settlement.[18] It is unclear what, if any, participation WRA or SWEEP had in the proceeding.

59. Proceeding No. 11AL-947E was another Public Service rate case that applied to all rate classes, unlike the instant case. WRA was the only member of the Environmental Groups who intervened.

60. WRA neither filed any testimony nor took a position with respect to the Settlement Agreement in the proceeding. It is unclear what, if any, participation WRA had in the case.

61. The last two proceedings cited by the Environmental Groups in their list of "tariff development or rate design" cases where they have been "repeatedly recognized" are more than ten years old; therefore, they are of no value in an argument of little value.

62. Further, an examination of the of "tariff development or rate design" cases where Environmental Groups have been "repeatedly recognized" shows the following statistics for nine cases over the past ten years:

Intervenor	# of Interventions Granted	# of Large Commercial Rates[19]
WRA	9/9	0/9
SWEEP	3/9	0/9
Vote Solar	2/9	0/9
NRDC	0/9	0/9
CLF	0/9	0/9
ESNA	0/9	0/9
GES Coalition	0/9	0/9
UNMD	0/9	0/9

[18] *See* Settlement Agreement filed on January 23, 2015 in Consolidated Proceeding Nos. 14AL-660E and 14A-0680E

[19] That is, the number of interventions granted in a tariff proceeding that concerned only large commercial customers, not residential or small commercial customers.

63. The vast majority of the interventions granted among the Environmental Groups were to WRA. Six of the eight groups contained within the Environmental Groups constituted two total interventions in the total of "dozens of other proceedings" where the Commission has granted "leave to intervene" over the past ten years.

64. Put simply, the Environmental Groups failed to provide one instance where an intervention was granted in a tariff proceeding that affected only large commercial customers and not residential and small commercial customers.

65. In the few proceedings where a member of the Environmental Groups was granted intervenor status, with one exception, the intervention provided little to no information that could not have been presented as an *amicus curiae,* which would have provided a savings to the respective ratepayers.

66. The assertion that due to the grant of previous interventions, it is arbitrary and capricious to deny interventions in an entirely different proceeding is a spurious argument. The hollowness of this unpersuasive argument is evident with only a cursory look at the proceedings hand-picked by the Environmental Groups and cited in their Motion Seeking Modification.[20]

III. FAILURE TO STATE WHY THE OCC WILL NOT REPRESENT THEIR INTERESTS

67. None of the interventions filed by the Environmental Groups met the requirements of Commission Rule 1401(c). Specifically, each of the Environmental Groups failed to address why the OCC would not adequately represent their interests. After their interventions were denied, they have decided to address this issue in the Motion Seeking

[20] Moreover, an argument could be made that based on the action/inaction of a party in a proceeding, they may be less likely to be granted an intervention in the future.

Modification. Yet again, these potential intervenors fail to distinguish each individual position and provide a reason why each of their purported interests would not be represented by the OCC, as required for permissive intervention in a Commission proceeding under Rule 1401(c). Rather, the Environmental Groups band together as if each of them has the exact same difference from the OCC, while somehow having, without explanation, a unique difference from each other. This failure by each entity to meet the legal standard set forth in Rule 1401(c) is fatal to their requests for permissive intervention and subsequent Motion Seeking Modification.

68. Because each intervenor must show why the OCC would not adequately represent their interest, which they have failed to do once again, the intervenors will be examined and considered individually.

69. Each of the Environmental Groups appears to attach some significance to the fact that their group consists, at least in part, of ratepayers of Public Service. Yet, they fail to address with any particularity why the OCC would not represent their interest. Further, because the rate at issue does not affect residential, small commercial, or agricultural customers, the OCC has a limited interest and role in this proceeding, as would any group whose intervention appears to rely on the fact that the group is in part composed of Public Service residential rate payers.

70. The OCC stated the following in its intervention:

> The OCC's concerns include, but are not limited to, the reasonableness of the proposed rates and rate structures; **whether the proposed rates and rate structures will encourage the development of EV charging stations and EV ownership**, and any other issues that are identified through discovery and during the proceeding. (Emphasis added)

OCC Intervention at ¶ 6.

71. While admitting that the OCC's goals are similar to the Environmental Groups goals,[21] they fail to actually compare each group's statement to the OCC. A comparison of the OCC statement to each intervention of the Environmental Groups demonstrates why no such comparison was made; they are nearly identical, as shown below:

> WRA:[22]
>
> As discussed above, modification of the Company's rate schedule for commercial and industrial charging will help to promote electric vehicle adoption, which in turn can reduce emissions from the transportation sector.
>
> NRDC/SWEEP:[23]
>
> NRDC and SWEEP believe that the S-EV tariff structure could be improved to optimize and accelerate commercial vehicle electrification.[24]
>
> CLF, ESNA, GES Coalition, UNMD and Vote Solar:[25]
>
> The Coalition's organizations and their members seek a prompt transition in Colorado from conventional internal combustion engine-powered motor vehicles to EVs. EV charging is a significant component of the overall cost of EV ownership, and a new Public Service S-EV rate that reduces the cost of EV charging for large non-residential customers should help spur the growth of EVs in Colorado.[26]

72. Put simply, the Environmental Groups have asserted an interest in the promotion of EV ownership that mirrors the interest stated by the OCC in its intervention. The main difference, however, between the OCC's statement and the statements of the Environmental

[21] Motion Seeking Modification, p. 19.

[22] WRA Petition to Intervene p.4.

[23] Because NRDC and SWEEP made no distinction between themselves, the ALJ is left to assume that these two separate entities are exactly the same in this respect, which raises the question of why both groups are necessary parties to this proceeding.

[24] NRDC and SWEEP Intervention at ¶ 10.

[25] Once again, CLF, ESNA, GES Coalition, UNMD and Vote Solar, made no distinction between themselves, leaving the ALJ to assume that these five separate entities are exactly the same in this respect, raising the question of why all of these groups are necessary parties to this proceeding. Further, if these groups can band together and not distinguish their reason for intervention, it raises the question of why every neighborhood association in the state would not be permitted to intervene as well. A quick google search shows that this could lead to 222 neighborhood associations from the City of Denver alone potentially intervening and becoming parties in this matter.

[26] Environmental Justice Coalition Intervention at ¶ 9.

Groups is that only the OCC correctly identifies the primary issue in this proceeding, *i.e.*, the determination of just and reasonable rates. The Environmental Groups fail to do so.

73. Further, the Environmental Groups appear to distinguish themselves from the OCC by stating that the OCC "advocate[es] for just and reasonable rates that minimize the monthly bills paid by ratepayers."[27] This is unpersuasive. Such a distinction between the Environmental Groups and the OCC implies that the Environmental Groups may support rates that are not just or reasonable. Yet, the Commission must ensure that all rates are just, reasonable, and non-discriminatory, pursuant to § 40-3-101(1), C.R.S. Specifically, this statute provides:

> All charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded, or received for such rate, fare, product or commodity, or service is prohibited and declared unlawful.

Therefore, any rate that is not just and reasonable is, by statute, unlawful.

74. While the Environmental Groups acknowledge that perhaps they and the OCC have stated the same goals, the Environmental Groups further assert that they may have a different view regarding the aspects of rate making. Specifically, the Environmental Groups cite to *Cherokee Metro Dist. v. Meridian Serv. Metro Dist.*, 266 P.3d 401 (Colo. 2011), to support the proposition that the OCC's position must be identical to that of the Environmental Groups.[28] This premise is not correct.

75. A cursory examination of *Cherokee* demonstrates that the Environmental Groups' premise is flawed. In *Cherokee,* the Court applied "Wright and Miller's test for determining

[27] Motion Seeking Modify p. 19.

[28] Again, the ALJ is left to assume that either each group has a different interest from the OCC without any discussion of how each group's interest differs from the OCC.

whether a would-be intervenor's interest is adequately represented" under Federal Rule of Civil Procedure 24(a)(2). 266 P3d. at 407. "Wright and Miller's test" provides:

> [1] If the interest of the absentee is not represented at all, or if all existing parties are adverse to the absentee, then there is no adequate representation.
>
> [2] On the other hand, if the absentee's interest is identical to that of one of the present parties, or if there is a party charged by law with representing the absentee's interest, then a compelling showing should be required to demonstrate why this representation is not adequate.
>
> [3] But if the absentee's interest is similar to, but not identical with, that of one of the parties,
>
> a discriminating judgment is required on the circumstances of the particular case, although intervention ordinarily should be allowed unless it is clear that the party will provide adequate representation for the absentee.

Id. (*citing* 7C Charles Alan Wright, Arthur R. Miller, Mary Kay Kane & Richard L. Marcus, *Federal Practice and Procedure* § 1909 (3d ed. 1997)).

76. Federal Rule of Civil Procedure 24(a)(2) and "Wright and Miller's test" do not govern in this administrative proceeding. Rather, Commission Rule 1401(c) governs.

77. Even assuming, however, that "Wright and Miller's test," which has never been found to apply in proceedings before the Commission, applied in this proceeding, then the OCC would constitute a party charged by law with representing the interests of the ratepayers and a **compelling showing** (emphasis added) must be made that this representation is not adequate. As discussed above, the Environmental Groups have failed to make any such showing.

78. Section 40-6.5-104(1), C.R.S., states:

> The consumer counsel shall represent the public interest and, to the extent consistent therewith, the specific interests of residential consumers, agricultural consumers, and small business consumers by appearing in proceedings before the commission and appeals therefrom in matters which involve proposed changes in a public utility's rates and charges, in matters involving rule-making which have an impact on the charges, the provision of services, or the rates to consumers, and in matters which involve certificates of public convenience and necessity for

> facilities employed in the provision of utility service, the construction of which would have a material effect on the utility's rates and charges.

79. Additionally, the Commission has previously stated that the presumption of adequate representation may be overcome if: (1) there is proof of collusion between the OCC and the utility or any other party; (2) the OCC has or represents some interest adverse to the consumer; or (3) the OCC fails due to nonfeasance in its duties of representation or negligence or bad faith. *Proceeding No. 11A-510E, Decision No. C11-0987 issued September 14, 2011*. The undersigned, although not bound by this Decision, finds no reason to deviate from this standard in a case where the tariff does not even affect residential, small commercial, or agricultural customers. The Environmental Groups, however, failed to address any of these factors.

80. The interest, strategy, or even the desire for a different outcome from the OCC in a proceeding, has long been found by this Commission to be insufficient to justify a permissive intervention. *Proceeding No. 19AL-0290E, Decision No. R19-0689-I issued October 31, 2011,* ¶¶ *12-15.*

81. For the foregoing reasons, the interventions filed by the Environmental Groups once again fail to meet the requirements of Commission Rule 1401(c). Specifically, each of the Environmental Groups have yet to individually and sufficiently address why the OCC would not represent their interests.

IV. INDIVIDUAL GROUPS

82. The Motion Seeking Modification is generally presented as a group effort that does not distinguish between each individual entity. Further, most of the groups present enhanced or additional arguments in support of the assertion that they have a tangible interest in the above captioned proceeding. Although the undersigned believes only the argument made in the underlying interventions should be considered, and the potential intervenors should not be

given a second bite at the apple, each of the enhanced or additional arguments in the Motion Seeking Modification will be addressed.

1. WRA

83. For a little more than two pages, WRA discusses its beliefs and goals, including how it believes in the advancement of EVs. There is, however, no mention of the instant proceeding or how the determination that an optional tariff limited to large commercial customers is just and reasonable and will have a substantial effect on a tangible interest. Rather, the undersigned is left with statements, such as the following:

> WRA has a substantial tangible interest in this proceeding. WRA is a non-profit regional environmental law and policy center that works to protect and restore the natural environment of the Interior West. WRA's Energy Program advances these environmental goals by advocating for policies that reduce the detrimental environmental impacts of energy production, transmission, and distribution, bearing in mind reliability concerns and overall cost-effectiveness. WRA achieves environmental improvements in the form of decreased air pollution, decreased water usage, and reduced greenhouse gas emissions. These environmental improvements impact the physical world and are, by their very nature, "tangible."[29]

84. That is, after the bare bones statement that they have a **substantial** (emphasis added) tangible interest, WRA goes on to describe itself, its Energy Program, its goals, its policies, its achievements, and how those achievements improve the world. There is nothing in this statement that relates to the above captioned proceeding or the issue to be determined in this matter. At no time is the instant proceeding even mentioned. Moreover, this statement, if accepted as a tangible interest, would permit WRA to intervene in almost any proceeding before the Commission.

[29] Motion Seeking Modification, p. 6-7.

85. After spending an additional one and a half pages stating the benefits of EVs and WRA's support for the encouragement of EVs, WRA finally mentions the instant proceeding:

> The nexus between WRA's tangible interest and the issues in this proceeding is aligning the Company's financial incentives with the public policy goal of expanding utilization of electric vehicles while also avoiding rate design components that needlessly discourage the adoption of electric vehicles.[30]

86. Yet again, this is a bare bones statement. WRA fails to state a certain tangible interest in this particular proceeding, or even what it perceives to be the issues in this matter. An organization having a goal is not the same as it having a tangible interest that may be substantially affected by a proceeding.[31]

87. Nowhere in this three plus pages referenced above is there any discussion of why or how an optional tariff that is for only large commercial customers may substantially affect the adoption of EVs. Further, this proceeding does not involve ratepayer or customer rates. The large commercial customers will be free to charge the general public whatever rate they choose at EV charging stations. This proceeding will have no impact on that price. Nor could it have an impact on the cost to ride an electric bus. If RTD decides that the money potentially saved on charging its fleet is better spent on more benefits for its drivers, it is free to make such a business decision.

88. Not even taking into account that the claimed tangible interest is not tangible,[32] or that this alleged tangible interest is so vague it could be applied to almost any Commission

[30] *Id.* at p. 9. (Footnote 24 Omitted)

[31] Notably, the passage quoted above is footnoted to a paragraph in WRA's initial intervention which was not part of any claim of a tangible interest. Rather, it was under a paragraph titled WRA's History of in Commission Proceedings and Proceedings Involving Public Service. The next paragraph titled Specific Grounds and Interests that Justify Intervention did not include this statement.

[32] Tangible is defined as having or possessing physical form; capable of being touched and seen; perceptible to the touch; tactile; palpable; capable of being possessed or realized; readily apprehensible by the mind; real substantial. Black's Law Dictionary 1456, (6th ed. 1990).

proceeding,[33] there is no explanation as to why WRA believes it can control what third parties charge to consumers in a proceeding that only examines if the proposed tariff for only large commercial customers is just and reasonable. If WRA seeks to inform the Commission that the less large commercial customers have to pay Public Service for electricity, the more likely the cost will be lower at charging stations for EV customers, thereby potentially increasing EV purchases and being better for the environment, this may be accomplished as an *amicus curiae*.

2. NRDC

89. NRDC states that its members have an "interest in advancing the electrification of the transportation sector." NRDC continues, "[t]his is not an abstract interest; advancing the electrification of the transportation sector will directly impact the health and well-being of NRDC's members who are exposed to exhaust from gasoline and diesel."[34]

90. Even if one agrees with the dubious premise that advancing electrification in the transportation sector is not abstract, it cannot be claimed as a tangible interest as that is not at issue here. This proceeding concerns an optional time-of-use rate for large commercial customers, with no control over the price large commercial customers charge EV owners for charging a vehicle. This proceeding is not going to require the installation of new charging stations, nor will it decide the source used to generate power for charging stations. It will do nothing more than determine if a proposed optional tariff for large commercial customers is just and reasonable.

[33] An argument could be made that WRA, based on this claim of an tangible interest, would have a better claim to intervene in a CPCN proceeding for a sightseeing service as that applicant would have a far more direct impact on its claimed tangible interest if the applicant sought to use a gas powered vehicle for its proposed sightseeing service.

[34] Motion Seeking Modification, p. 9.

91. NRDC then proceeds to discuss its goals, organizations agenda, and the dangers of fossil fuels for an additional two pages. While this is interesting and certainly a cause for concern to the nation as a whole, it does not bestow a tangible interest that will be substantially affected by this proceeding.

92. In summing up its argument, NRDC clearly shows the flaw in their claim of a tangible interest. Specifically, NRDC states:

> The lungs, hearts, fetuses, and children of the more than 10,000 members and 53,000 activists in Colorado are tangible, even in the narrowest definition of the word requiring a "physical form." They should not be denied representation in this case.[35]

93. NRDC apparently confuses a litigated hearing with a public hearing. Anyone, even those who are not part of the 10,000 or 53,000 people referenced above, are always invited and encouraged to submit comments to any Commission proceeding.

94. Laws and rules are enacted for a purpose and/or a reason. The Commission has a rule concerning who may be granted a permissive intervention in a proceeding. If the basis for finding a party met the requirements of Rule 1401(c) by merely having lungs, the rule would have no effect.

95. Finally, NRDC also appears to confuse an interest with being interested. Many people or groups can be interested in the result of a proceeding, but the requirement for intervention is that there be a pecuniary or tangible interest that may be substantially affected by the proceeding. Those who are interested in the outcome of a proceeding are why public comments and public hearings exist in matters pending before the Commission.

[35] *Id. at* p. 11. (Emphasis Omitted)

3. SWEEP

96. SWEEP fails to do anything more than claim it has a direct and tangible interest. SWEEP does not claim to represent residents of Colorado or ratepayers of Public Service. Rather, SWEEP discusses the benefits of electrification and then claims this as a tangible interest:[36]

> A well-designed commercial and industrial tariff to promote electric vehicle charging is essential to maximize the benefits from electric vehicles and promote energy efficiency. This is a tangible interest and should not be denied representation.[37]

97. This may be a goal, it may be an aspiration, but it is not a tangible interest nor is this interest unique to SWEEP. It would be hard to believe that the 11 parties in the above captioned proceeding would not work to design the tariff well and try to maximize benefits from EVs and promote energy efficiency.

98. SWEEP continues along this line:

> SWEEP plans to evaluate and, in conjunction with NRDC, potentially propose changes to Public Service's 2019 S-EV rate proposal with an eye toward maximizing its potential to accelerate electric vehicle deployment and unlock energy efficiency opportunities, and it may offer testimony on these issues.[38]

99. Public Service publicly filed the proposed tariff on May 24, 2019. The seven-page tariff and supporting testimony is available to be viewed by SWEEP via the Commission's E-Filing system. SWEEP has not stated why after having almost three months to examine the proposed tariff, SWEEP is still unsure if it even opposes the tariff. A party which only intends to support the proposed tariff is exactly why the Commission allows parties to participate as an *amicus curiae*.

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[36] Again, failing to state how this purported tangible interest may be substantially affected.

[37] Motion Seeking Modification p. 12.

[38] *Id*.

4. Vote Solar

100. Vote Solar separates itself from the rest of the Environmental Coalition that jointly filed an intervention in this proceeding.

101. Vote Solar begins its portion of the Motion Seeking Modification explaining what it is, its expertise in various distributed energy resources, and how it has participated in a work group. Without yet having used the words "tangible interest," Vote Solar states:

> This proceeding substantially impacts Vote Solar's tangible interests because it will set a new rate for commercial EV customers.[39]

102. Providing no explanation as to what these tangible interests may be, Vote Solar goes on to give examples of indirect things that may result from this proceeding. This tariff, however, is not for all commercial EV users, only large commercial EV customers. Again, if the proposition is that lower cost electricity to large commercial customers may lead to an increase in EV usage, Vote Solar could make this point more efficiently and effectively as an *amicus curiae*.

5. Remainder of the Environmental Justice Coalition

103. The various neighborhood groups that comprise the Environmental Justice Coalition do not distinguish themselves from one another. Rather, once again, their new claims are made collectively.

104. The Environmental Justice Coalition states all of the problems with air pollution and provides numerous studies in support of these problems. After three pages describing the effects of air pollution, the Environmental Justice Coalition claims that reducing air pollution is their tangible interest.

[39] *Id.* at p. 13.

105. As discussed above, this proceeding is an optional tariff proceeding for a time-of-use rate for large commercial customers and the only issue is if this rate is just and reasonable.

106. The Environmental Justice Coalition fails to connect the above captioned proceeding with this claimed tangible interest. Yet again, it is obvious that lower costs to large commercial customers may encourage them to lower prices at charging stations. But, as discussed above, this proceeding cannot force these large commercial customers to lower costs to individual consumers. The Commission and the undersigned ALJ are aware of the negative effects of pollution; however, this proceeding will have no direct effect on pollution.

107. If a tangible interest is found because someone possesses lungs or breaths the air, then Rule1301(c) has no effect. Rule 1301(c) exists to allow for hearings to be run efficiently. A quick google search finds 222 registered neighborhood associations in Denver alone. If the members of the Environmental Justice Coalition are found to have a tangible interest, then each of these 222 groups referenced above could also be found to have a tangible interest. The Commission will be unable to function with proceedings that contain over 200 intervenors and the costs of these 200 plus intervenors would cause the utilities enormous legal bills that are all recoverable from the ratepayers.

108. Finally, the Environmental Justice Coalition claims that they are being held to a higher standard for intervention then other parties, apparently claiming that their intervention was only denied because it was filed collectively. First, in Decision No. R19-0633-I, the undersigned ALJ stated that it was assumed that the stated tangible interest was shared equally by all the parties. Each member of the Environmental Justice Coalition was also given that assumption. While it would be far more instructive and persuasive to show how each member of

the group had a tangible interest that may be substantially affected by this proceeding, it was the failure to provide any tangible interest that doomed the Environmental Justice Coalition. This is not a higher standard for the Environmental Justice Coalition; the rest of the members of the Environmental Groups were held to the same legal standard and denied intervention for the same reason.

V. ENTITLEMENT, LACK OF UNDERSTANDING OF COMMISSION RULES, AND THE NEED TO RUN AN EFFICIENT HEARING

109. The Commission has adopted rules pertaining to interventions. The relevant parts of Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, state as follows:

> (c) 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. If a motion to permissively intervene is filed in a natural gas or electric proceeding by a residential consumer, agricultural consumer, or small business consumer, the motion must discuss 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. The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Motions to intervene by permission will not be decided prior to expiration of the notice period.

110. The Environmental Groups have failed to provide any pecuniary or tangible interest that shall be substantially affected by this proceeding. The motions and requests filed in this proceeding never explain how an optional time-of-use tariff rate available only to large commercial customers will have any effect on any purported tangible interest. The Environmental Groups never mention the type of tariff (optional, time-of-use) or the tariff's only customers (large commercial).

111. Many of the claimed tangible interests are better described as policy issues. Policy issues are not a sufficient basis for permissive intervention.

112. Throughout the Motion Seeking Modification is a tone of entitlement. This attitude appears to be due to previous granting of interventions. Although failing to address the issue in the instant case, these groups somehow appear to believe that if the term EV is contained in the tariff they are an intervenor by right, thereby supplanting the ALJ's function and discretion in this proceeding. It is alarming to read that parties not granted intervenor status had engaged in discovery.[40] Any intervention granted to a party that is not an intervenor by right shall be granted by the Commission, not by the intervening party.[41]

113. The Commission has the right to determine how to conduct a proceeding. Pursuant to § 40-6-101(1), C.R.S., the Commission "shall conduct its proceedings in such manner as will best conduce the proper dispatch of business and the ends of justice." The Commission may look to the Colorado Administrative Procedure Act (§ 24-4-101 *et seq.*, C.R.S.) for guidance. Section 24-4-105, C.R.S. "grants substantial discretion" to agencies such as the Commission "to control the scope and presentation of evidence" in a proceeding. *Williams Natural Gas Company v. Mesa Operating Limited Partnership*, 778 P.2d 309 (Colo. App. 1989)

114. The Colorado Administrative Procedure Act provides among other things, that that an ALJ shall "regulate the course of the hearing," "issue appropriate orders that shall control the subsequent course," and "dispose of motions to intervene."

[40] Motion Seeking Modification p. 21.

[41] The ALJ believes any costs incurred by Public Service in addressing any discovery requests made from a party that was not granted an intervention in the above captioned proceeding is recoverable from these parties and should not be charged to the ratepayers.

115. Upon referral to the ALJ, the Commission encouraged the ALJ and the parties to work expeditiously in this proceeding. Additional parties who fail to meet the requirements of Rule 1401(c) will delay the prompt hearing of this proceeding.

116. The issue in this proceeding is quite narrow. The only determination is if the proposed optional tariff that is only for large commercial customers is just and reasonable. This proceeding cannot affect the cost customers pay to power EVs. This proceeding cannot affect the number of EV charging stations. This proceeding cannot affect the price RTD charges people to ride electric buses. This proceeding cannot effect the sources of energy (fossil fuels v. renewable sources) to provide the electricity at charging stations. This proceeding, again, is only to determine if this proposed, optional, tariff is just and reasonable.

117. May a lower optional, time-of-use tariff rate to charge EVs encourage owners of charging stations to charge less to customers to charge their vehicles? Of course. Could the ALJ in this proceeding force the large commercial customers who may or may not take advantage of the proposed tariff charge customers less to charge their vehicles? No.

118. While the intentions of the Environmental Groups may be noble, they are not a tangible interest. It is left to the discretion of the assigned ALJ to "regulate the course of the hearing."

119. The undersigned ALJ believes he has a duty to the utility and the ratepayers of the utility to ensure that the hearing provides a full record but does not waste resources of the utility on issues that are irrelevant. With each intervenor that is granted an intervention without meeting the full requirements of Rule 1401(c), the legal costs to the utility will needlessly increase, and all of these legal costs are passed on to the ratepayers.

120. There is no limit on the amount of discovery requests that can be made by a party granted an intervention in a proceeding. A party without a pecuniary or tangible interest would have little relevant discovery requests. This leads to a waste of money on irrelevant requests or worse, the potential of the utility refusing to provide a discovery answer, leading to a motion to compel and more waste of Commission and utility time and money that will eventually be paid by the ratepayers.

121. Further, in the instant case, none of the members of the Environmental Groups has even stated either in their initial intervention or the subsequent Motion Seeking Modification that they object to any portion of the proposed, optional, tariff. The tariff is a total of seven pages and has been a public document since May 24, 2019. Yet, almost three months later, none of the Environmental Groups can state any actual issue with, or objection to, the proposed tariff.

122. An intervenor has no burden of proof in a Commission proceeding.[42] If an intervenor favors a proposed tariff or application, this can be expressed simply in a brief as an *amicus curiae*. It is a waste of time and resources (money) to allow intervenors to intervene for the sole purpose of cross-examining other intervenors, since intervenors do not have a burden. If participation in a proceeding is simply to support a proposed tariff, this is done more effectively, and with less expense to the utility and ratepayers, with an *amicus curiae* brief in support of the tariff.

123. Finally, as mentioned above, the Environmental Groups propose a very dangerous proposition, that one's mere existence and policy goals provide a tangible interest under

[42] In certain Commission Proceedings an Intervenor may have a burden of going forward but this burden is separate from a burden of proof in a proceeding.

Rule 1401(c). If Rule 1401(c) is interpreted this way, the Commission would simply be unable to accomplish anything, for the reasons discussed above. This simply cannot be allowed.

124. Public comments and *amicus curiae* briefs are welcome to explain their support for EVs and concerns about pollution. That is, the forum that allows for the public to participate without impeding the functioning of the Commission or needlessly forcing ratepayers to pay for irrelevant and cumulative discovery requests.

125. For the foregoing reasons, each of the Environmental Groups have not shown that they have a pecuniary or tangible interest that may substantially be affected by this proceeding. Moreover, the Environmental Groups have not shown that their distinct interest is not adequately represented by the OCC, nor that it is inconsistent with other classes of consumers represented by the OCC. Rather, the Environmental Groups have provided policy interests that do not provide a sufficient basis to intervene in this proceeding. Therefore, the Motion Seeking Modification is denied.

VI. ORDER

A. It Is Ordered That:

1. The Unopposed Motion Seeking Modification of Decision No. R19-0625-I, filed on July 29, 2019, is denied.

2. This Interim Decision is certified as immediately appealable to the Commission *en banc* pursuant to 4 *Code of Colorado Regulations* 723-1-1502(d). Any person desiring to seek immediate appeal shall file such a request within seven days of the effective date of this Decision. If an immediate appeal is filed, any party may file a response within five days from filing of the appeal.

3. This Decision is effective immediately.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge