

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
APPROVING SETTLEMENT,
PERMANENTLY SUSPENDING TARIFFS, AND
REQUIRING THE FILING OF NEW TARIFFS**

Mailed Date: October 8, 2019

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I. STATEMENT

1. On May 24, 2019, Public Service Company of Colorado (Public Service or Company) 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. R19-0533-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, stating that the parties who have intervened in the proceeding to date 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.”^{1 2}

26. On July 23, 2019, by Decision No. R19-0625-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 filed their Unopposed Motion Seeking Modification of Decision No. R19-0625-I.

28. On August 1, 2019, Public Service filed its Unopposed Motion for Extraordinary Protection of Highly Confidential Material.

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.

29. On August 9, 2019, by Decision No. R19-0682-I, the Unopposed Motion for Extraordinary Protection of Highly Confidential Material was granted.

30. On August 15, 2019, by Decision No. R19-0689-I, the Motion Seeking Modification of Decision No. R19-0625-I was denied.

31. On August 22, 2019, the Environmental Justice Coalition and NRDC filed their Unopposed Motions Contesting Interim Decisions Nos. R19-0625-I and R19-0689-I.

32. On August 28, 2019 by Decision No. C19-0757, the Unopposed Motion Contesting Interim Decisions No. R19-0625-I and R19-0689-I filed by the Environmental Justice Coalition and NRDC were denied.

33. On September 20, 2019, the Parties filed their Motion to Approve Settlement Agreement and Settlement Agreement (Unopposed Motion and Settlement Agreement).

II. DISCUSSION

A. Testimony and Terms of the Settlement Agreement

34. The Settlement Agreement, attached to this Decision as Attachment A, explains that the Parties negotiated a resolution of all disputed issues in this proceeding. The Parties assert that the tariff, as modified by the terms of the Settlement Agreement, is in the public interest and supported by the testimony of the Parties. Below is a summary of some of the terms agreed upon by the Parties

B. Rate Structure

35. The Parties agree to the use of a single rate for EV charging for purposes of this proceeding, with chargers retaining the option to use other rates that the chargers may be eligible for under the Company's current tariffs.

C. Critical Peak Pricing

36. The Parties agree that the S-EV Rate Tariff shall utilize a Critical Peak Pricing (CPP) charge of \$1.50 during CPP events.

D. On-Peak/Off-Peak Window

37. The Parties agree that the on-peak time-of-use (TOU) energy rate window in the S-EV Rate Tariff will be 12:00 p.m. to 9:00 p.m. (weekdays except holidays), with all other hours utilizing the off-peak energy rate.

E. Seasonal Rates

38. The Settling Parties agree that the S-EV Rate Tariff will utilize seasonal differentiation for on- and off-peak TOU energy rates in the eight winter months (October through May) and the four summer months (June through September).

F. Review and Check-in Process

39. The Settling Parties agree to a review, analysis, and check-in process related to the approved S-EV Rate Tariff after additional market data is available.

40. The process for this review is fully contained in the Settlement Agreement (Attachment A).

G. Future Advice Letter Filing

41. The Settling Parties agree that on or before August 1, 2021, the Company will make a future Advice Letter filing with the Commission with two optional rate schedules.

42. Both optional rate schedules will be available for fleets and public fast-charging, and one rate schedule may utilize the S-EV Rate Tariff in its current form, as approved in this proceeding, or with subsequent modifications. Further, the Parties agree the Company will work with the Parties and other interested parties to design rates that are just and reasonable and are

supported by all available data as well as the feedback received from both public charging owners and operators and fleet chargers during the check-in and review process workshop(s).

III. FINDINGS AND CONCLUSIONS

43. The parties have the burden of proving by a preponderance of the evidence that the Settlement is just and reasonable.³ In reviewing the terms of the Stipulation and Settlement Agreement, the ALJ applied the Commission's direction and policy with respect to review of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

44. The Commission has an independent duty to determine matters that are within the public interest. *See Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

45. The undersigned ALJ has reviewed the Direct and Rebuttal Testimony filed by Public Service, Answer testimony of the intervenors, and the recitations of the Parties in the Unopposed Motion and Settlement Agreement. The ALJ has duly considered the positions of all parties in this matter.

46. Based on the entire record, the ALJ finds that approval of the tariff, as modified by the terms of the Settlement Agreement, is in the public interest.

47. The ALJ further finds that the parties have established by a preponderance of the evidence that the Settlement Agreement is just, is reasonable, and should be accepted by the Commission.

³ Section 13-25-127(1), C.R.S., and Rule 4 *Code of Colorado Regulations* 723-1-1500 of the Commission's Rules of Practice and Procedure, establish the burden of proof for a party which asks the Commission to adopt its advocated position. Decision No. C06-0786, Proceeding No 05A-072E issued July 3, 2006 at ¶ 40 and n.23.

IV. ORDER

A. The Commission Orders That:

1. The Joint Motion to Approve Settlement Agreement filed by Public Service Company of Colorado (Public Service) on September 20, 2019 is granted, consistent with the discussion above.

2. The Settlement Agreement filed by Public Service on September 20, 2019 and attached to this Decision as Attachment A, is approved, consistent with the discussion above.

3. The tariff sheets filed with Advice Letter No. 1798 on May 24, 2019, are permanently suspended.

4. After this Recommended Decision becomes the Decision of the Commission, if that is the case, Public Service shall file new advice letters and tariffs consistent with the directives above. The advice letters and tariffs shall be filed as new advice letter proceedings and shall comply with all applicable rules. The advice letter filing shall be made no later than 60 days after this Recommended Decision becomes the Decision of the Commission, if that is the case, and the tariffs shall be filed on not less than 10 business days' notice. The advice letters and tariffs must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice

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

6. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

7. Response time to exceptions shall be shortened to seven days.

8. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

9. If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

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

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director