

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0270E

IN THE MATTER OF ADVICE LETTER NO. 1889 – ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8-ELECTRIC FOR APPROVAL TO RECOVER COSTS ASSOCIATED WITH JOINING THE WESTERN ENERGY IMBALANCE SERVICES MARKET OPERATED BY THE SOUTHWEST POWER POOL AND TO CREDIT SPP WEIS MARKET SALE REVENUES TO CUSTOMERS THROUGH THE ELECTRIC COMMODITY ADJUSTMENT TARIFF, TO BECOME EFFECTIVE JULY 15, 2022.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ADDRESSING INTERVENTIONS, FURTHER
SUSPENDING EFFECTIVE DATE OF TARIFF SHEET,
AND REQUIRING PARTIES TO CONFER AND
PROPOSE A PROCEDURAL SCHEDULE**

Mailed Date: August 29, 2022

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I. STATEMENT, SUMMARY, AND BACKGROUND**A. Summary**

1. This Decision addresses interventions; grants amicus curiae status to Black Hills Colorado Electric, LLC, doing business as Black Hills Energy (Black Hills); further suspends the effective date of the relevant tariff sheet; requires the parties to confer on a procedural schedule; provides information relevant to that conferral; and orders Public Service Company of Colorado (Public Service or the Company) to file a proposed consensus procedural schedule on behalf of the parties by September 6, 2022.

B. Procedural History and Background

2. On June 14, 2022, Public Service filed Advice Letter No. 1889-Electric (Advice Letter), seeking to modify its electric commodity adjustment (ECA) tariff to allow recovery of Southwest Power Pool (SPP) Western Electric Imbalance Services (WEIS) market administration fees (SPP-WEIS); credit SPP-WEIS market sales revenues to customers; and allow for recovery of a standalone revenue requirement associated with the SPP-WEIS entry fee and software and technology upgrades through the ECA. The tariff sheet filed with Advice Letter No. 1889 have an effective date of July 15, 2022.

3. With its tariff sheet, Public Service also filed a Motion for Approval of Alternative Form of Notice (Motion for Alternative Notice), seeking authority under § 40-3-104(1)(c)(I)(E), C.R.S., to provide notice of its tariff filings to customers by publication in *The Denver Post* and its website in the form provided in Exhibit 1 to the Motion for Alternative Notice.

4. On June 22, 2022, the Commission granted the Motion for Alternative Notice.¹

¹ Decision No. C22-0380-I (mailed June 22, 2022).

5. On June 24, 2022, the Office of Utility Consumer Advocate (UCA) filed a Letter of Protest, requesting that the Commission suspend the effective date of the tariff sheet and set the matter for hearing.

6. On June 30, 2022, the Commission suspended the effective date of the tariff sheet submitted with the Advice Letter by 120 days through November 12, 2022.² At the same time, the Commission established July 29, 2022 as the deadline for interested persons and entities to file a motion to intervene in this proceeding.

7. On July 5, 2022, Public Service filed an affidavit concerning notice of the tariff filings by publication.

8. Also on July 5, 2022, the UCA filed a Notice of Intervention (UCA's Intervention), intervening of right in this proceeding.

9. On July 21, 2022, the Colorado Energy Consumers (CEC) filed a Motion to Permissively Intervene and Request for Hearing (CEC's Intervention).

10. On July 25, 2022, Trial Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Intervention as of Right (Staff's Intervention).

11. On July 28, 2022, Black Hills filed an Unopposed Motion . . . to Participate as Amicus Curiae (Black Hills' Motion).

12. On July 29, 2022, the Colorado Energy Office (CEO) filed a Notice of Intervention by Right (CEO's Intervention).

² Decision No. C22-0397 (mailed June 29, 2022).

13. Also on July 29, 2022, Western Resource Advocates (WRA) and Climax Molybdenum Company (Climax) each filed separate Motions seeking to permissively intervene (WRA's Intervention and Climax's Intervention).

14. On August 17, 2022, the Commission referred this proceeding to an administrative law judge (ALJ) for disposition by minute entry.

II. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Interventions and Black Hills' Motion

15. The ALJ finds that the UCA's, Staff's, and CEO's Interventions establish that they have properly intervened as of right per Rule 1401 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. As such, their Interventions are acknowledged and they are parties to this proceeding.

16. No party filed a response to CEC's, WRA's, and Climax's Interventions. As such, their Interventions are deemed confessed and unopposed.³ For this reason, and the reasons stated in their respective Interventions, the ALJ grants CEC's, WRA's and Climax's requests to permissively intervene. As such, CEC, WRA, and Climax are parties to this proceeding.

17. Black Hills' Motion states that Public Service and Staff take no position on the Motion; that the UCA does not object to the Motion; and that CEC does not oppose the Motion's requested relief.⁴ Black Hills wants to submit legal arguments as an amicus curiae in this Proceeding because it is also pursuing participating in the SPP-WEIS market.⁵ Black Hills explains that no other public utility has received Commission approval for a modified ECA for certain SPP-

³ Rule 1400(d), 4 CCR 723-1.

⁴ Black Hills' Motion at 2.

⁵ *Id.*

WEIS costs and that as a result, the Commission's decision on the Company's advice letter will affect Black Hills' future SPP-WEIS filings.⁶ Black Hills seeks leave to present legal arguments to aid the Commission in arriving at a just and reasonable disposition.⁷

18. The ALJ finds that Black Hills has met the requirements to participate as an amicus curiae, per Rule 1200(c), 4 CCR 723-1, and that Black Hills' participation in that limited role will aid the Commission in arriving at a just and reasonable disposition of this Proceeding. As such, Black Hills' Motion is granted.

B. Further Suspension of the Tariff Sheet

19. As noted, the Commission suspended the effective date of the tariff sheet by 120 days through November 12, 2022.⁸ The ALJ finds that additional time is needed to reach a final disposition in this Proceeding. Specifically, additional time is necessary to: develop the record; hold an evidentiary hearing; issue a recommended decision; allow for exceptions and responses thereto; allow for motions for rehearing, reargument and reconsideration (RRR); and allow for the Commission to issue a final decision in this proceeding. For all these reasons, the ALJ finds that further suspension of the tariff's effective date is warranted, and extends the tariff's period of suspension for an additional 130 days to March 22, 2023, as permitted by § 40-6-111(1)(b), C.R.S.

C. Procedural Schedule and Hearing Dates

20. In anticipation of an evidentiary hearing on the Advice Letter and tariff sheet, the ALJ requires the parties to confer and file a proposed consensus procedural schedule. The below

⁶ *Id.*

⁷ *Id.*

⁸ Decision No. C22-0397 (mailed June 29, 2022).

information provides important instruction on the matters the parties must consider as they confer and submit a proposed procedural schedule.

21. First, in proposing a hearing date, the parties should ensure that they allot an appropriate amount of time to conclude the hearing (*e.g.*, one full day versus two or more days).

22. Second, proposed hearing date(s) must accommodate the hearing being complete by **December 2, 2022**.⁹ The ALJ recognizes that this will require a compressed procedural schedule, but unless Public Service files an amended Advice Letter with an effective date later than March 22, 2023, the ALJ sees no other option.¹⁰ Indeed, this matter involves issues that the Commission has not yet addressed, making it even more vital to ensure there is enough time to issue a thoughtful and thorough recommended decision, and to allow for exceptions and RRR on the same.

23. The parties should consult the Commission's public calendar to find available hearing dates. The ALJ is currently available for a hearing on the following dates: November 7 to 10; November 14 to 18; and November 29 to December 2. The ALJ's schedule is quickly becoming filled with evidentiary hearings, which may impact the ALJ's availability on these dates. As such, the parties are encouraged to identify hearing dates as soon as possible, and to communicate proposed dates informally to the ALJ via email copied to all parties. Establishing hearing dates first is also necessary because all the other procedural deadlines must accommodate the hearing date(s).

⁹ Based on the current March 22, 2023 effective date, there is no room to push out a hearing beyond December 2, 2022.

¹⁰ *See* § 40-6-111, C.R.S.

24. Third, the parties' proposed procedural schedule must include deadlines to file the following items: answer, rebuttal, and cross-answer testimony; witness and exhibit lists; exhibits not already filed¹¹ (*e.g.*, exhibits that are not testimony or attached to testimony); corrections to exhibits and final exhibits; a joint witness examination matrix listing the order of witnesses and anticipated examination time for all parties; settlement agreements; testimony in support of settlements; stipulations; pre-hearing motions; statements of position, and any other legal briefing the parties wish to submit.

25. Fourth, the proposed procedural schedule must also address the parties' preference on the manner in which the hearing will be held. As the parties may be aware, due to the COVID-19 pandemic, the Commission has not been holding in-person hearings for some time. As of May 2022, based on the parties' preferences, the Administrative Hearings Section of the Commission (Section) has begun setting in-person hearings, with all parties and witnesses appearing in person; and hybrid hearings, with parties and witnesses appearing in person and remotely by Zoom.¹² The Section also continues to offer to hold hearings remotely, with all parties, witnesses, and the ALJ appearing remotely via Zoom). The parties must include a statement in their proposed procedural schedule indicating whether they wish to hold the hearing fully in-person, hybrid, or fully remotely.

26. As indicated below, Public Service is responsible for submitting the parties' proposed consensus procedural schedule.

¹¹ The ALJ does not require parties to pre-file exhibits that will be used solely for impeachment, to refresh recollection, or that may be raised in rebuttal. But, the parties are expected to prefile any exhibit they intend to offer into evidence during the evidentiary hearing.

¹² The ALJ appears in person for hybrid hearings.

27. The ALJ will issue a decision scheduling the hearing and establishing procedural deadlines and requirements as soon as possible after Public Service submits a proposed consensus procedural schedule.

28. *The parties are advised and on notice* that any failure to file the required proposed consensus procedural schedule or agree to a procedural schedule will result in the ALJ selecting hearing dates and other deadlines without further input from the parties. In that event, after scheduling the hearing, the ALJ will not consider future requests to reschedule the hearing or move deadlines, unless the requesting party files a motion demonstrating good cause.

III. ORDER

A. It Is Ordered That:

1. The Office of the Utility Consumer Advocate's (UCA), Trial Staff of the Colorado Public Utilities Commission Staff's (Staff), and the Colorado Energy Office's (CEO) Motions or Notices to Intervene as of right are acknowledged. Consistent with the above discussion, Colorado Energy Consumers' (CEC), Western Resource Advocates' (WRA), and Climax Molybdenum Company's (Climax) Motions seeking to permissively intervene are granted. As such, the parties to this proceeding are: Public Service Company of Colorado (Public Service), the UCA, Staff, CEO, CEC, WRA, and Climax.

2. Black Hills Colorado Electric, LLC's (Black Hills) Unopposed Motion . . . to Participate as Amicus Curiae is granted; Black Hills is an amicus curiae in this Proceeding.

3. Consistent with the above discussion, the proposed effective date of Public Service's tariff pages with Advice Letter No. 1889-Electric filed on June 14, 2022 is suspended for an additional 130 days to March 22, 2023, per § 40-6-111(1)(b), C.R.S.

4. The parties must confer on a procedural schedule that addresses all the items discussed in ¶¶ 21 through 25 above, including the manner in which the evidentiary hearing should be held (fully in-person, hybrid, or fully remote).

5. On or by the close of business on September 6, 2022, Public Service must file a proposed procedural schedule on behalf of all parties addressing all the items discussed in ¶¶ 21 through 25 above, including the manner in which the hearing should be held (fully in-person, hybrid, or fully remote).

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director