

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0204E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2021-2023 TRANSPORTATION ELECTRIFICATION PLAN.

**INTERIM DECISION DENYING MOTION TO REOPEN
AND CORRECT RECORD**

Mailed Date: December 9, 2020

Adopted Date: December 9, 2020

I. BY THE COMMISSION

A. Statement, Findings, Conclusions

1. By this Decision, the Commission denies the Motion to Reopen the Record in Order to Correct the Record (Motion) filed in this Proceeding on December 2, 2020, by the Colorado Office of Consumer Counsel (OCC).

2. Through the Motion, the OCC requests the Commission reopen the evidentiary record in this Proceeding in order to correct the oral testimony of the OCC's Rate/Financial Analyst, Mr. Chris Neil, provided at hearing on November 23, 2020. Specifically, the OCC seeks to correct Mr. Neil's response to the question posed by Chairman Jeffrey Ackermann, asking: "... is the message, then, back to Governor Polis, he's chosen an unrealistic target through his Energy Office?"¹ In response, Mr. Neil stated: "I think he chose a wishful goal, and a goal might be good, but I don't think you should be building a lot of infrastructure and spending a lot of money, based on a wishful goal."²

¹ OCC Motion p. 1 (citing Hrg. Trans., Nov. 23, 2020, at 375:8-12).

² OCC Motion p. 1 (citing Hrg. Trans., Nov. 23, 2020, at 375:13-16).

3. The OCC states that Mr. Neil's response provided at hearing does not accurately reflect the OCC's position. The OCC states the correct answer should have been "No." The OCC requests that the answer provided by Mr. Neil during the evidentiary hearing be stricken from the record and replaced with the response: "No."

4. The OCC indicates the Motion is opposed by Public Service Company of Colorado, the Colorado Energy Office, Southwest Energy Efficiency Project (SWEET), the Joint EV Charging Providers, and the Environmental Justice Coalition.

5. The OCC indicates that its request to shorten response time to the close of business on December 4, 2020, is also opposed. The OCC indicates that certain parties support either shortening response time to December 11, 2020, or allowing additional pages in the statements of position due that same date to address the OCC's Motion.

6. The OCC indicates that SWEET and the Environmental Justice Coalition requested the OCC provide the following statement of their positions in the Motion:

SWEET opposes this Motion, but does not object to a shortened or waived response time. SWEET believes the Motion improperly attempts to revise Mr. Neil's testimony at the hearing after the fact, rather than correct an error in the hearing transcript. SWEET also notes that the OCC can clarify or add additional context to Mr. Neil's testimony in its Statement of Position.

The Environmental Justice Coalition opposes this Motion, but does not object to a shortened or waived response time. The Environmental Justice Coalition believes the Motion improperly attempts to revise Mr. Neil's testimony at the hearing after the fact, rather than correct an error in the hearing transcript. Like SWEET, the Environmental Justice Coalition notes that the OCC can clarify or add additional context to Mr. Neil's testimony in its Statement of Position.

7. The OCC indicates that Trial Staff of the Public Utilities Commission, Electrify America, LLC, the City and County of Denver, the Colorado Energy Consumers, ChargePoint, Inc. and EVgo Services LLC took no position on the Motion or the request to shorten response time.

8. As an initial matter, the Commission finds good cause to *sua sponte* waive remaining response time to the Motion, as allowed by Rule 4 *Code of Colorado Regulations* 723-1-1400(b). The Commission already has the information that it needs, provided in the Motion itself, to render a decision on the Motion without further delay and responses from other parties.

9. To the merits of the Motion, the Commission denies this highly unusual request seeking to reopen the evidentiary record after the multi-day evidentiary hearing and insert a different answer than that provided by a party's witness. We find the Motion improperly attempts to revise Mr. Neil's testimony at hearing after the fact, rather than merely "correct" an error in the hearing transcript. This finding accords with the concerns raised by SWEEP and the Environmental Justice Coalition, as provided in the Motion.

10. Although we recognize the OCC's concern that its witness may have provided a response that does not accurately reflect the OCC's overall position, the proper procedure and time to clarify that response was during counsel's re-direct of the witness. We note that the OCC has, as additional recourse, the opportunity to clarify or add additional context to Mr. Neil's oral testimony in the OCC's upcoming statement of position, due in this Proceeding on December 11, 2020.

II. ORDER

A. It Is Ordered That:

1. The Motion to Reopen the Record in Order to Correct the Record (Motion) filed on December 2, 2020, by the Colorado Office of Consumer Counsel, is denied.
2. Remaining response time to the Motion is waived.
3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONER'S WEEKLY MEETING
December 9, 2020.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners