

Decision No. C23-0415

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0188E

IN THE MATTER OF ADVICE LETTER NO. 1921 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO IMPLEMENT INTERCONNECTION TARIFFS PURSUANT TO PARAGRAPH 3853(P) OF THE COMMISSION'S INTERCONNECTION RULES AND TO IMPLEMENT RELATED PERFORMANCE INCENTIVES IN ACCORDANCE WITH DECISION NO. C23-0143, TO BECOME EFFECTIVE JULY 31, 2023.

**COMMISSION DECISION SUSPENDING EFFECTIVE
DATE OF TARIFF SHEETS, REFERRING THE MATTER
TO AN ADMINISTRATIVE LAW JUDGE, AND
ESTABLISHING NOTICE AND INTERVENTION PERIOD**

Mailed Date: June 22, 2023

Adopted Date: June 21, 2023

IMPORTANT NOTICE: ANY PERSON DESIRING TO PARTICIPATE ONLY BY MAKING A STATEMENT MAY DO SO BY SUBMITTING A WRITTEN COMMENT THROUGH <https://puc.colorado.gov/> INDICATING PROCEEDING NO. 23AL-0188E. IF YOU DESIRE TO ASK QUESTIONS OF A WITNESS OR OTHERWISE PARTICIPATE AS A PARTY IN THIS MATTER, YOU MUST REQUEST PERMISSION FROM THE COMMISSION TO BE AN INTERVENOR (EVEN IF YOU HAVE ALREADY FILED AN OBJECTION). ANYONE DESIRING TO INTERVENE MUST CAREFULLY FOLLOW THE LAW AND COMMISSION RULES FOR BECOMING AN INTERVENOR. FOR FURTHER INFORMATION ON HOW TO INTERVENE, CALL (303) 894-2070 (PUC EXTERNAL AFFAIRS OFFICE).

I. BY THE COMMISSION

A. Statement

1. On April 17, 2023, Public Service Company of Colorado (Public Service or Company) filed Advice Letter No. 1921-Electric with tariff sheets for the interconnection of distributed energy resources (DERs) and other small generation facilities.

2. This Decision sets for hearing the tariff sheets filed under Advice Letter No. 1921-Electric and suspends their effective date to November 28, 2023.

3. We refer the matter to an Administrative Law Judge (ALJ).

4. A pleading to intervene in this matter may be filed by any person, firm, or corporation desiring to be a party and fully participate in this Proceeding no later than July 21, 2023.

B. Discussion

1. Commission Rules Governing the Interconnection of DERs

5. On July 30, 2021, the Commission’s modified rules governing the interconnection of distributed energy resources (DERs) and other small generation facilities took effect pursuant to Colorado statutes. The modified rules, found within its Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3, were promulgated in Proceeding No. 19R-0654E through Decision Nos. R20-0773, C21-0183, and C21-0298.

6. Paragraph 3853(p) of the Commission’s Interconnection Rules, 4 CCR 723-3-3850 through 3859, requires tariffs that set forth timelines and fees associated with the interconnection of DERs. Subparagraph 3853(p)(I) requires the Company to have on file with the Commission an interconnection tariff that sets forth fees, deadlines, and interconnection procedures. The interconnection tariff must comply with the Interconnection Rules. Subparagraph 3853(p)(II) requires the interconnection tariff to be filed with an advice letter, specifying that the tariffs filed by a utility such as Public Service may be set for hearing and suspended in accordance with the Commission’s Rules of Practice and Procedure and applicable statutes. Subparagraph 3853(p)(III) lists specific provisions that must be included in the interconnection tariffs. The tariffs must

include timelines for: pre-application procedures in paragraph 3853(a); interconnection requests governed by paragraph 3853(d); interconnection agreements, the standard contracts signed by Public Service and the interconnecting customer with DER,¹ addressed in paragraph 3853(f); general Level 1 interconnection procedures for small DER interconnections set forth in paragraph 3854(a); initial reviews for larger Level 2 interconnections per paragraph 3855(b); Level 2 interconnection customer option meetings governed by paragraph 3855(c); Level 2 supplemental reviews under paragraph 3855(d); and the Level 3 study processes for the largest interconnections—such as for community solar gardens (CSGs), for example—in Rule 3856, including the scoping meeting defined in paragraph 3856(a), the feasibility studies in paragraph 3856(b), the system impact study in paragraph 3856(c), and the facilities study in paragraph 3856(d). The tariffs must also set forth any fees, including those associated with the interconnection milestones listed previously. Subparagraph 3853(p)(III)(B)(i) states that in the advice letter tariff filing, the utility shall demonstrate that any fee in the tariff is cost-based.

7. In Decision No. R20-0773, Administrative Law Judge (ALJ) Steven H. Denman explains the purpose of paragraph 3853(p) of the Interconnection Rules and why the adoption of the rule is neither unusual nor unreasonable because it sets forth the general criteria and requirements to be addressed in interconnection tariffs and requires that utilities file tariffs complying with the Interconnection Rules.² ALJ Denman goes on to explain that if the Commission finds that a utility's interconnection tariff is improper and fails to comply with the Interconnections Rules, the Commission could set the tariff for hearing and suspend its

¹ Public Service filed its 30-plus page “Distributed Energy Resource Interconnection Agreement” in Volume 3 of its 2022-2025 Renewable Energy Standard Plan in Proceeding No. 21A-0625EG. Hearing Exhibit 101, Ihle Direct Testimony, Attachment JW1-3, 2022-2024 Renewable Energy Standard Plan, Volume 3, pp. 152-180.

² Decision No. R20-0773, issued November 5, 2020, Proceeding No. 19R-0654E, ¶ 84, pp. 26-27.

effectiveness, and, as a result of the hearing process, a just and reasonable interconnection tariff would be established. He concludes that this process for the Commission to determine just and reasonable tariffs is normal under Colorado's file-and-suspend scheme for regulating public utility rates, charges, classifications, practices, rules, and regulations. He further states that as an independent regulatory agency, the Commission is "quite experienced in and accustomed to setting utility filings for hearings when necessary and then rendering a fair decision that adjudicates just and reasonable results."³

8. ALJ Denman notes that during the rulemaking in Proceeding No. 19R-0654E, the Colorado Solar and Storage Association (COSSA), the Solar Energy Industries Association (SEIA), and Public Service opposed the adoption of paragraph 3853(p). COSSA and SEIA suggested limiting interconnection tariffs to cover only utilities' fees, costs, or charges associated with interconnection applications or other procedures, stressing, however, that any utility specific documents should not circumvent the timelines or procedures in the Interconnection Rules.⁴ Public Service was concerned that proposed Rule 3853(p) would elevate into Commission rules program elements "that are now more appropriately handled in program policies and guidelines."⁵

9. In its decision on exceptions to Decision No. R20-0773, the Commission upheld the adoption of paragraph 3853(p) and further added subparagraph 3853(p)(III)(B)(i) that require a utility such as Public Service to demonstrate that any fee established in its interconnection tariff is cost-based.⁶ The Commission further clarified that all potential fees must be listed in the

³ Decision No. R20-0773, issued November 5, 2020, Proceeding No. 19R-0654E, ¶ 85, p. 27.

⁴ Decision No. R20-0773, issued November 5, 2020, Proceeding No. 19R-0654E, ¶ 78, p. 25.

⁵ Decision No. R20-0773, issued November 5, 2020, Proceeding No. 19R-0654E, ¶ 79, p. 25.

⁶ Decision No. C21-0183, issued March 30, 2021, Proceeding No. 19R-0654E, ¶ 76, pp. 25-26.

Company's interconnection tariffs.⁷ The Commission's subsequent decision addressing applications for rehearing, reargument, or reconsideration caused no further modifications to paragraph 3853(p).⁸ The rules attached to Decision No. C21-0298 became the Interconnection Rules effective July 30, 2021.

2. Interconnection Investigation

10. On July 12, 2021, the Commission issued Decision No. C21-0399 opening an investigation into the interconnection of DERs in Proceeding No. 21I-0321E. The Commission stated that an investigation conducted by Staff of the Colorado Public Utilities Commission (Staff) into Colorado electric utility interconnection practices may provide information helpful to improving the interconnection process for DERs.

11. The Commission stated that, as part of this investigation, the collection of comments on certain topics from entities with direct experience interconnecting to Colorado's electric grid, such as comments from generation owners, developers, and installers, may provide more candid answers from the entities that routinely work with regulated electric utilities to interconnect. The Commission further stated that it is also interested in investigating the possible use of performance incentive mechanisms (PIMS) and performance-based regulation (PBR) to improve the interconnection process for DERs.

12. Staff filed a report on its findings on December 29, 2022. With respect to Public Service, Staff drew the following conclusions in its report:

- Public Service's stakeholder process for interconnections can be improved,
- Changing staff and attrition causes interconnection disruptions,

⁷ Decision No. C21-0183, issued March 30, 2021, Proceeding No. 19R-0654E, ¶ 77, p. 26.

⁸ Decision No. C21-0298, issued May 17, 2021, Proceeding No. 19R-0654E.

- The Company’s success rate of interconnection applications can be much better, and
- A PIM/PBR is not recommended for interconnections at this time.

13. Following the filing of Staff’s report, Public Service submitted additional comments on August 22, 2022, stating that it sought to provide increased transparency into the Company’s interconnection processes. Public Service stated that in its Rebuttal Testimony in Proceeding No. 21A-0625EG, the 2022-2025 Renewable Energy Standard Plan, the Company proposed significant process changes to provide increased certainty around interconnection costs and viability for Community Solar Gardens (CSGs). Public Service further stated that the Company also planned to address many concerns related to hosting capacity analysis and data provision through its Distribution System Planning Application in Proceeding No. 22A-0189E. Public Service was “optimistic that these changes will improve the likelihood of viable, well-vetted projects being built expediently, while simultaneously deterring speculative projects.” Public Service also stated that the additional milestone tracking in its new DER Interconnection Application Portal would be critical to identifying where delays are occurring related to both Company and DER developer actions.⁹

14. Notwithstanding Public Service’s stated efforts, the Commission received numerous comments since October 2022 from DER installers and customers seeking to interconnect their DER onto Public Service’s system. Many of these comments were recorded in Proceeding No. 21I-0321E. Most of the comments report delays in interconnecting customer DERs.

⁹ Comments of Public Service Company of Colorado, August 22, 2022, p. 2.

15. On February 14, 2023, Public Service filed additional comments in the investigatory proceeding. The Company repeated its assertion that the interconnection process is a detailed and nuanced process consisting of many steps that need to be taken in a coordinated fashion between the Company and DER installers. The Company further stated that “meeting our customers’ expectations for interconnection equally relies upon solar industry partners understanding and executing on their portion of the process.” The Company asserts that many DER interconnections appear to be delayed because they are “pending installer action,” alleging that the DER installer has failed to complete their required actions to advance to the next phase of the interconnection application.¹⁰

16. In its February 14, 2023 comments, Public Service acknowledges a significant backlog of more than 4,000 interconnection applications awaiting a “completeness review” as of early January 2023. The Company states that it experienced an unanticipated influx of applications after the passing of the Inflation Reduction Act on August 16, 2022. Public Service also states that the Company rejected more than 4,000 applications (approximately 40 percent of all applications) submitted by DER installers since October 1, 2022, due to inaccurate or incomplete applications. Public Service also states that the Company has been resolving “bugs in the interconnection portal which launched in May.”¹¹

17. Public Service further states that the Company has accelerated working through the current backlog over the last several weeks. During the week of February 5, 2023, for instance, the Company conducted completeness reviews pursuant to paragraph 3853(d) on approximately 1,200 applications, an approximate 93 percent increase from the volume of completeness reviews

¹⁰ Comments of Public Service Company of Colorado, February 14, 2023, p. 7.

¹¹ Comments of Public Service Company of Colorado, February 14, 2023, p. 2.

processed in the beginning of January 2023. Public Service expects to be caught up with completeness reviews by the beginning of March of 2023.¹²

18. At the Commission's February 15, 2023 weekly business meeting, the Commission closed the investigation.

3. Public Service's Inaugural Distribution System Plan

19. On May 2, 2022, Public Service filed an application for approval of its inaugural Distribution System Plan (DSP) as also mentioned in the Company's August 22, 2022 comments filed in the investigation in Proceeding No. 21I-0-321E.

20. By Decision No. R23-0080, issued on February 2, 2023, Hearing Commissioner Megan M. Gilman found that approval of the application, as modified by a comprehensive settlement agreement¹³ and a complementary joint stipulation, and as further modified by the recommended decision, is in the public interest.¹⁴

21. With respect to the interconnection of DERs, the settlement agreement states that Public Service agrees to establish a technical working group to address DER interconnection issues, including the ability to more timely complete interconnection requests.

22. Hearing Commissioner Gilman states in Decision No. R23-0080 that the record in Proceeding No. 22A-0189E raises concerns about the Company's timelines for processing different steps of DER interconnections. She concludes that while that proceeding may not be the proper venue, DER interconnections are important matter for the Commission to pursue to ensure

¹² Comments of Public Service Company of Colorado, February 14, 2023, p. 3.

¹³ Staff and COSSA and SEIA are parties to the Settlement Agreement.

¹⁴ Unless exceptions are filed or the Commission timely stays the decision on its own motion, Decision No. R23-0080 will become the decision of the Commission on February 22, 2023.

that customers and companies requesting to interconnect to the Company's system encounter a process that is efficient, transparent and provides proper recourse when appropriate standards, including the Commission's own rules, are not met.¹⁵

23. Commissioner Gilman further directed Public Service to specifically address the effectiveness of the Company's web portal for advancing the integration of DERs and for the implementation of potential metrics, such as the number of interconnection applications that are being accepted versus rejected, streamlining of timelines for interconnection applications, etc.¹⁶

4. Proceeding No. 23M-0093E and Advice Letter No. 1921-Electric

24. By Decision No. C23-0143, issued on February 28, 2023, the Commission opened Proceeding No. 23M-0093E for the sole purpose of directing Public Service to file interconnection tariffs pursuant to Subparagraph 3853(p) of the Commission's rules governing the interconnection of DERs. The Commission directed Public Service to include provisions in its interconnection tariffs that afford interconnection customers refunds for all or portions of the fees charged for interconnections in the event the Company fails to comply with the timelines set forth in the Company's interconnection tariff. The Commission also directed Public Service to propose an overarching performance incentive mechanism (PIM) governing its interconnection processes in the furtherance of state policies that advance the installation and use DERs by Public Service's customers.

25. In Advice Letter No. 1921-Electric, Public Service explains that the accompanying tariff sheets set forth the timelines for all stages of the interconnection process, which are the same as those set forth in the relevant portions of the Commission's Interconnection Rules. The Company states

¹⁵ Decision No. R23-0080, issued February 2, 2023, Proceeding No. 22A-0189E, ¶ 79, pp. 22-23.

¹⁶ Decision No. R23-0080, issued February 2, 2023, Proceeding No. 22A-0189E, ¶ 78, p. 22.

that, as required, the fees charged interconnection customers for the various studies are cost-based. Also as required by Decision No. C23-0143, the Advice Letter notes that its tariff sheets also provide for an interconnection fee refund mechanism and a PIM to incentivize DER interconnections into the Company's system consistent with Colorado state policy. Finally, the Company's tariff sheets also allow for the Company, at its discretion, to evaluate Level 3 interconnection requests in clusters for the purpose of the system impact study.¹⁷

26. The Company's proposed fee refund process involves comparing the total number of days the rules permit for the Company to process an application to the total number of days it took the Company to complete those steps, excluding delays caused by the interconnection customer or developer for completion of tasks for which they are responsible. The Company explains that under its proposed tariff, any refund amounts will be the product of the applicable interconnection application fee and the ratio of excess processing time to allowed processing time. For example, if it took the Company 50 percent longer than specified to process a given application, the interconnection customer would be awarded a refund of 50 percent of the application fee. The Company proposes that any refunds be capped at 100 percent of the applicable fee.¹⁸

27. The Company's proposed PIM structure would determine penalties or bonuses by comparing the mean time to completion for all projects for a given interconnection level within a year to the allowed days for the corresponding interconnection level. Projects with completion times equal or greater than two standard deviations from the mean for each level would be excluded from the data set. The Company proposes three tiers of bonus or penalty. If the mean completion

¹⁷ Advice Letter, pp. 3-5.

¹⁸ Advice Letter, pp. 7-9.

time for a given interconnection level is at least ten percent less than allowed by Commission rules, the Company would be awarded a bonus equal to ten percent of application fees collected for that interconnection level. Similarly, if the mean completion time were at least 25 or 50 percent shorter than allowed, the bonuses would rise to 25 and 50 percent of collected application fees respectively. The Company proposes that penalties for mean completion times in excess of the allowed durations would be half the magnitude of the potential bonuses, in light of the fact that in this event, the Company would also be refunding individual fee amounts for delayed applications. Finally, because the PIM and refund mechanisms will require changes to its information technology processes, the Company proposes that the refund and PIM tracking not be required to begin until at least 90 days after approval. If such tracking begins in 2023, the Company states that it will prorate any incentives or penalties for the 2023 PIM based on the proportion of 2023 tracked, and consistent with the structure of the PIM presented here.¹⁹

28. The Colorado Solar and Storage Association and the Solar Energy Industries Association (COSSA/SEIA) jointly filed a protest to Public Service's Advice Letter No. 1921-Electric on May 3, 2023. COSSA/SEIA request that the Commission suspend the new tariff sheets and set the matter for hearing. COSSA/SEIA present seven issues to justify this request.

29. First, they indicate that there is a need to examine the timelines laid out by rule versus the discrete steps the Company included in the allowed-day totals that form the basis of decisions about interconnection customer refunds and the PIM. They note that setting this matter for a hearing will provide an opportunity to conduct discovery and investigate the Company's assumptions in calculating these allowed totals. Second, they note significant changes in the application fees charged to Level 1, Level 2 and Level 3 interconnection customers and question

¹⁹ Advice Letter, pp. 9-12.

the rationale for these sizable fee changes as well as the reasonableness of the outside consultancy fees. COSSA/SEIA's third issue concerns the Company's proposal to tie any refunds to the size of the application fee. Given business losses due to delayed generation and "additional retail charges," they request the opportunity to explore the appropriate compensation mechanism for the harmed party. Fourth, COSSA/SEIA take issue with the Company's proposal to exclude withdrawn, incomplete and re-review applications from the calculation of the PIM, indicating that this "segments and nickels and dimes the process in a way that fails to align incentives." They state that they seek a PIM that incentivizes the Company to solve these problems rather than exclude them. Fifth, COSSA-SEIA question whether the Company's broad customer base is the appropriate entity to hold financially accountable for the Company's interconnection performance. Sixth, COSSA-SEIA expresses concern about the delays in implementing Rule 3853(p), pointing to the Company's request for 45 days to prepare testimony if this matter is set for hearing and noting that allowing this would delay the proceeding to the fall of 2023. This, COSSA-SEIA asserts, would allow the Company to be out of compliance with the Rule for over two years. Finally, COSSA-SEIA expresses concern that AL 1921 puts forward a complex new regulatory regime for interconnection performance without accompanying testimony. It contends that setting the matter for hearing will allow a robust administrative record to be developed, which will support a Commission decision.²⁰

30. Staff of the Colorado Public Utilities Commission filed a protest to Public Service's Advice Letter on June 16, 2023, also requesting that the Commission suspend the new tariff sheets and set the matter for hearing. Staff's protest letter states that "...the Company's tariff filing creates a new complex interconnection process, procedures, and performance measures. Discrete

²⁰ COSSA SEIA Protest Letter, pp. 2-5.

changes to section(s) of interconnection tariff impacts other sections of interconnection tariff and performance incentive measures.”²¹

31. Staff specifically expresses concern about 1) whether the completion timelines contained in the proposed tariff are reasonable and whether interconnection customers are provided sufficient guidelines to minimize the occurrence of applications being declared incomplete or requiring supplemental review; 2) whether the changes in application fees the Company proposes are reasonable; 3) whether it is appropriate to exclude applications that require re-review by the Company from eligibility for the refund mechanism; 4) whether it is appropriate to exclude withdrawn, incomplete or re-review applications from the data set used in the calculation of the PIM; and 5) the potential for cross-subsidization of interconnection customers in the even that interconnection application fees are insufficient to fund Company performance incentives.²²

C. Conclusions and Findings

32. Pursuant to § 40-6-111(1), C.R.S., the Commission may suspend tariff sheets for 120 days. Based on the foregoing, we find good cause to suspend the tariff sheets submitted with Advice Letter No. 1921-Electric for 120 days through November 28, 2023, and set the matter for hearing.

33. We refer this matter to an Administrative Law Judge (ALJ).

34. A pleading to intervene may be filed by any person, firm, or corporation desiring to be a party and fully participate in this proceeding, as ordered below. The filing of any other document protesting the tariff sheets shall not allow participation as an intervenor in this matter.

²¹ Staff Protest Letter, p. 3.

²² Staff Protest Letter, pp. 3-4.

II. ORDER

A. The Commission Orders That:

1. The proposed July 31, 2023 effective date of the tariff sheets filed with Advice Letter No. 1921-Electric filed by Public Service Company of Colorado (Public Service) on April 17, 2023, is suspended until November 28, 2023, or until further order of the Commission.

2. The matter is referred to an Administrative Law Judge (ALJ). The ALJ shall set a hearing date, rule on interventions, and establish other procedures by separate decision(s).

3. Any person, firm, or corporation, including any who have previously filed a document protesting the proposed tariff pages, who desire to intervene and participate as a party in this proceeding shall file a motion to intervene with the Commission no later than July 21, 2023 and shall serve a copy of the notice or motion on Public Service's attorney of record.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 21, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners