

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0322E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO CONCERNING AN APPEAL OF A LOCAL GOVERNMENT LAND USE DECISION ISSUED BY THE TOWN OF EATON.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
SCHEDULING PREHEARING CONFERENCE, JOINING
TOWN OF EATON, ADDRESSING INTERVENTIONS, AND
EXTENDING DEADLINE FOR FINAL DECISION**

Mailed Date: August 19, 2022

I. STATEMENT, SUMMARY, AND BACKGROUND

A. Summary

1. This Decision schedules a remote prehearing conference for September 12, 2022 at 1:00 p.m.; joins the Town of Eaton (Eaton) as a party; acknowledges interventions of right; extends the statutory deadline for a final Commission decision to issue; and requires the parties to confer on a procedural schedule.

B. Procedural History and Background

2. On July 11, 2022, Public Service Company of Colorado (Public Service or the Company) initiated this matter by filing the above-captioned Application with exhibits. The Application appeals Eaton's decision denying a special review use permit to the Commission, under § 29-20-108(5), C.R.S., (2021).

3. On July 12, 2022, the Commission issued a Notice of Application Filed (Notice) providing public notice of the Application, and setting a 30-day intervention deadline.

4. The following parties filed timely Notices of Intervention of Right: the Office of the Utility Consumer Advocate (the UCA), Eaton, and the Colorado Public Utilities Staff (Staff).

5. On August 17, 2022, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition by minute entry.

II. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Interventions and Mandatory Joinder

6. Staff is entitled to intervene of right in any Commission proceeding, per Rule 1401(e) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. As such, Staff's Intervention of Right is acknowledged and Staff is a party to this Proceeding.

7. The UCA's Intervention establishes that it has properly intervened of right under Rule 1401(a), 4 CCR 723-1. As such, the UCA's Intervention of Right is acknowledged and the UCA is a party to this Proceeding.

8. Eaton is joined as an indispensable party as required by Rule 3705(c) of the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3. As such, Eaton's Intervention is moot.

B. Prehearing Conference

9. Under Rule 3705(b), 4 CCR 723-3, a prehearing conference must be held within 15 days after the Commission deems the Application complete. Since the Commission has not deemed the Application complete, it will automatically be deemed complete on August 26, 2022, by operation of Rule 1303(c)(IV), 4 CCR 723-1.¹ Based on this, a prehearing conference must be

¹ Under Rule 1303(c)(IV), when the Commission has not deemed an application complete, it will automatically be deemed complete within 15 days of the expiration of the intervention deadline. As relevant here, that deadline is August 11, 2022, which leads to the August 26, 2022 date mentioned above. See Notice.

held by September 12, 2022.² To allow the parties as much time as possible to confer on the matters discussed below, and for Eaton to make the filing required by Rule 3705(d), 4 CCR 723-3, the prehearing conference will be scheduled for September 12, 2022, as set forth below.

10. During the prehearing conference, a procedural schedule will be established to move this matter toward disposition. The following matters will be addressed: a public comment hearing³ date, location, and manner (in-person, remote or hybrid); the manner in which the Company will provide notice of the public comment hearing; whether the parties have provided the Company with a list of individuals and groups to receive notice of the public comment hearing per Rule 3705(f), 4 CCR 723-3; evidentiary hearing date(s), location and manner (in-person, remote or hybrid); deadlines to make filings relating to the evidentiary hearing (e.g., written testimony and other exhibits, witness lists, final exhibits, settlement agreements, stipulations, prehearing motions, joint witness examination matrix, and statements of position). The ALJ may address other issues, including those which the parties raise.

11. Under Rule 3704, 4 CCR 723-3, the public comment hearing is to be held at a location specified by Eaton. And, under Rule 3705(d), ten days before the prehearing conference, Eaton must provide the parties and the Commission information on its preference for the location of the public comment hearing. Eaton is required to provide this information by making a filing in this Proceeding at least ten days before the prehearing conference.

12. If Eaton chooses to hold the public comment hearing in-person in Eaton, during the prehearing conference, the parties should be prepared to suggest available locations in Eaton for the hearing.⁴

² Fifteen days after August 26, 2022 is Saturday, September 10, 2022. Given this, by operation of Rule 1203(a), 4 CCR 723-1, the deadline files on the next business day, which is Monday, September 12, 2022.

³ A public comment hearing is required per § 29-20-108(5)(b), C.R.S. and Rule 3704, 4 CCR 723-3.

⁴ See *infra*, ¶ 18-19.

13. As to location and manner of the evidentiary hearing, the Administrative Hearings Section of the Commission generally defers to the parties' preference as to whether the hearing will be held in-person, remotely, or by using a combination of both (hybrid). If the parties choose the in-person option, all parties and witnesses will be required to appear in person at a hearing room at the Commission's Office in Denver. If the parties choose the remote option, all parties and witnesses will appear by video-conference using Zoom. If the parties choose the hybrid option, the ALJ will lead the hearing in-person at the Commission's designated hearing room, and any party or witness wishing to appear in person or remotely may do so by appearing at a hearing room at the Commission's Office in Denver.

14. The parties are required to confer with each other on all of the above items before the prehearing conference and are encouraged to submit a proposed consensus procedural schedule during the prehearing conference addressing all of these items. To further facilitate the parties' conferral, when considering potential evidentiary hearing dates, the parties should plan on the hearing being held no later than January 13, 2023, but the parties are encouraged to consider earlier dates than that.⁵

15. The prehearing conference will be held remotely by video-conference, using the web-hosted service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

16. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to

⁵ This ensures that the Commission can issue its final decision in this matter consistent with the deadlines established in § 40-6-109.5, C.R.S.

the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.⁶

17. *All parties are on notice that* failure to appear at the prehearing conference may result in decisions adverse to their interests. The ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

C. Deadline for Final Commission Decision

18. Under § 29-20-108(5)(b), C.R.S., the appeal must be “conducted in accordance with the procedural requirements of section 40-6-109.5, C.R.S.” Section 40-6-109.5, C.R.S. exclusively addresses deadlines for the Commission to issue a final decision. As relevant here, a final Commission decision must be issued by December 26, 2022, per § 40-6-109.5(1), C.R.S.

19. Section 40-6-109.5(1), C.R.S., allows the Commission to extend the time to issue a final decision by an additional 130 days if it finds additional time is necessary. For several reasons, the ALJ finds that additional time is necessary. Specifically, before a hearing may be held, the parties must meet the numerous deadlines discussed above that will be established during the prehearing conference. In addition, this Proceeding presents issues that the Commission rarely sees, which means that more time may be necessary to issue a recommended and final decision in this matter. Moreover, once the ALJ issues a recommended decision, additional time must be allotted for the parties to file exceptions or applications for rehearing,

⁶ Participants will receive an email with the information to join the hearing at the email addresses on file with the Commission for this Proceeding. The ALJ anticipates that the hearing will be webcast, consistent with Commission practice; this means that those wishing to observe the hearing may do so without the need to join the hearing as a participant.

reargument, or reconsideration, and for the Commission to decide any such filings.⁷ All of this makes it impracticable for the Commission to issue a final decision by December 26, 2022.

20. For the foregoing reasons and authorities, the ALJ finds that additional time is necessary for the Commission to issue a final decision. As such, he ALJ extends the deadline by 130 days to May 3, 2023, days per § 40-6-109.5(1), C.R.S.

III. **ORDER**

A. **It Is Ordered That:**

1. The Office of the Utility Consumer Advocate and the Colorado Public Utilities Staff's Notices of Intervention of Right are acknowledged and they are parties to this Proceeding.

2. Consistent with the above discussion, the Town of Eaton (Eaton) is joined as party to this Proceeding.

3. On or by September 2, 2022, Eaton is required to submit a filing stating its preference for the location of the public comment hearing, per Rule 3705(d) of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-1.

4. The deadline for a final Commission decision to issue in this proceeding is extended by 130 days to May 3, 2023, per § 40-6-109.5(1), C.R.S.

5. A remote prehearing conference is scheduled as follows:

DATE: September 12, 2022

TIME: 1:00 p.m.

PLACE: Join by video conference using Zoom

6. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the

⁷ See Rules 1505 and 1506, 4 CCR 723-1.

Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

7. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

8. 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