

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22D-0461E

IN THE MATTER OF THE VERIFIED PETITION OF TRIAL STAFF OF THE COMMISSION
FOR A DECLARATORY ORDER REGARDING PUBLIC SERVICE COMPANY OF
COLORADO'S DELAY IN DEPLOYING ADVANCED METERS FOR NET-METERED
CUSTOMERS.

**COMMISSION DECISION DECLINING TO ACCEPT
PETITION FOR DECLARATORY ORDER,
DIRECTING STAFF TO CONDUCT ONGOING
MONITORING AND REPORTING, AND ORDERING
PUBLIC SERVICE TO REFILE ITS RESPONSE TO
DECISION NO. C22-0742-I**

Mailed Date: March 15, 2023

Adopted Date: March 8, 2023

TABLE OF CONTENTS

I. BY THE COMMISSION	2
A. Statement	2
B. Staff's Petition for a Declaratory Order	2
C. Public Service's Response to Staff's Petition	5
D. UCA and COSSA/SEIA Interventions	6
E. Public Service's Notice of Meter Deployment.....	8
F. Findings and Conclusions.....	9
II. ORDER.....	11
A. The Commission Orders That:	11
B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING March 8, 2023.....	12

I. BY THE COMMISSION**A. Statement**

1. On October 25, 2022, Staff of the Colorado Public Utilities Commission (Staff) filed a petition for a declaratory order asking the Commission to resolve an alleged uncertainty as to whether Public Service Company of Colorado (Public Service or the Company) should be permitted to delay installing advanced meters (or “smart meters”) for customers who take service with net metering.

2. This Decision declines to accept the petition for a declaratory order yet addresses the concerns raised by Staff through other means. As explained below, we instruct Staff to closely monitor the roll out of the advanced meters and to report back to the Commission regarding the Company’s progress. We further direct Public Service to refile its responses to the questions posed in Decision No. C22-0742-I in a manner that more usefully fosters understanding of the facts and circumstances surrounding the deployment of advanced meters for net metered customers and the associated billing requirements. We also direct the Company to present more thoroughly its analysis of the net metered customers who would have benefited and who would not have benefited financially from taking service under time-of-use (TOU) rates.

B. Staff’s Petition for a Declaratory Order

3. In its petition, Staff asserts that Public Service is delaying the installation of advanced meters for net metered customers. The Company’s Net Metering Service tariff, on Sheet Nos. 112 through 112E in Colorado PUC No. 8 Electric, defines net metered customers as those who take retail service under all of the Company’s other rate schedules, with a “Retail Renewable Distributed Generation Resource that operates in parallel with the Company’s system, that is no

larger than one hundred and twenty percent (120 percent) of the average annual consumption of electricity by the Customer at that site, and that has a rated capacity that does not exceed the Customer's service entrance capacity.”¹

4. Staff states in the petition that the delay in advanced meter installations for net metered customers means “that there could be a significant disparity between the rates net-metered customers are paid for electricity generated during peak hours and the rates other customers are charged by the Company.”² Staff explains that advanced meters are capable of tracking the time of customers' electricity use, which is a technical prerequisite to moving customers onto Public Service's TOU rates.

5. Staff raises questions in the petition but does not appear to explicitly allege wrongdoing by Public Service. Staff states that “it is not clear whether the Company is permitted to delay its advanced meter rollout for net-metered customers” by § 40-3-106(1)(a), C.R.S.³ Staff alleges that it is unclear whether the delay is permitted under previous settlements and Commission decisions, stating: “Although the settlements and Commission decisions in [previous] cases do not explicitly prohibit the Company from delaying advanced meter deployment for any particular subset of ratepayers (such as net-metered customers), those settlements and decisions also do not explicitly authorize such a delay.”⁴ Staff states that it is also not clear whether the delay is “contrary to the public interest.”⁵ Staff further asks the Commission “what remedy should be put in place if the Commission finds that the Company's delay was not permitted.”⁶

¹ Public Service COLO. PUC No. 8 Electric Tariff, Sheet No. 112 through 112E.

² Staff Petition, pp. 1-2.

³ Staff Petition, p. 3.

⁴ Staff Petition, p. 7.

⁵ Staff Petition, p. 2.

⁶ Staff Petition, p. 13.

6. Staff acknowledges in the petition that Public Service responded to concerns about the alleged delay earlier in the year, after *The Colorado Sun* published a related article on July 19, 2022.⁷ The Company’s response came in the form of a notice filed on August 3, 2022 in Proceeding No. 21A-0279E (August Notice). Staff argues that Public Service did not explain in that notice why billing enhancements to address net metered customers were not made earlier, such as “during the two-year period between the decision approving its residential TOU rate and today.”⁸ Staff further argues that net metered customers will have to wait at least seven months from the filing of the petition—and potentially up to 14 months—before they receive an advanced meter and are eligible to join a TOU rate.⁹

7. Staff also filed a procedural motion with its petition, requesting that the Commission: (1) consider the matter *en banc*; (2) establish an expedited procedural schedule, including a shortened notice and intervention period; and (3) waive response time to the motion.

8. On November 14, 2022, Public Service filed a notice of intervention by right in this Proceeding. Public Service states that determinations made by the Commission with respect to Staff’s petition would substantially affect the Company’s pecuniary and tangible interests and no other party could adequately represent those interests. The Company further states that the Commission’s determinations regarding the relief being sought by Staff will have a direct pecuniary and tangible impact upon the Company’s advanced meter deployment schedule, its customers, and its shareholders. Public Service states that the petition and the relief sought directly

⁷ Michael Booth, “Xcel pays Colorado solar homeowners 8 cents for their extra electricity. Then charges neighbors 17 cents to use it,” *The Colorado Sun*, July 19, 2022, available at: <https://coloradosun.com/2022/07/19/xcel-solar-rates-time-of-use-smart-meters/>.

⁸ Staff Petition, p. 6, further citing Decision No. R20-0642, Proceeding No. 19AL-0687E, issued on September 11, 2020.

⁹ Staff Petition, p. 6.

affect its Advanced Grid Intelligence and Security initiative and the schedule for implementing its Residential Energy Time-of-Use (RE-TOU) Service.¹⁰

9. By Decision No. C22-0742-I, issued on December 6, 2022, the Commission requested information from Public Service related to the allegations raised in Staff's petition. The Commission explained that before determining whether to accept Staff's petition or to address the matter through some other type of proceeding, and before we rule on Staff's procedural motion tied to its petition, additional information from Public Service was required. The Commission specifically sought information on the practical circumstances surrounding the alleged delay, the expected timing for the resolution of the alleged delay, and the Company's assessment of the procedural requirements for the Commission to address the alleged delay. The Commission also stated that it sought to understand the apparent complexity behind using the new advanced meters to bill net metered customers.

C. Public Service's Response to Staff's Petition

10. On December 20, 2022, Public Service filed a response to Staff's petition. Public Service generally argues that the Company's roll-out of advanced meters and its related actions with respect to net metered customers are consistent with Colorado law and the settlements and decisions raised in Staff's filing. Public Service states that it has not deviated from the Company's approved plans for the roll-out of advanced meter installations on a geographic basis over the period extending from 2019 to 2024. The Company further asserts that it never committed to deploying advanced meters for all of its "rate configurations" simultaneously, nor did it commit to specific deployments for any rate schedule or rate configuration at a specific time. Public Service

¹⁰ Public Service COLO. PUC No. 8 Electric Tariff, Sheet Nos. 33 through 33E.

further takes the position that the Company was not required to simultaneously roll out all of its rate configurations as part of the advanced meter deployment schedule. The Company asserts that: “It is simply an impossibility for the Company to be able to deploy all of the necessary functionality for the nearly 100 different rate configurations simultaneously and it never intended to do so.”¹¹

11. Public Service explains that, as part of the Company’s “Wave 8 release,” net-metered residential and small commercial customers are scheduled to begin receiving advanced meters beginning in March 2023 along with customers on other various rate configurations. The Company states that the billing software for the net-metered customers “went live on December 10, 2022” and approximately one year of “validation testing” is expected to be complete by this first quarter of 2023.¹²

12. Public Service also argues that the remedies suggested by Staff are not feasible or cost effective and would cause unnecessary delays in the deployment schedule. The Company states that it is impracticable “to make a sweeping determination whether each individual net-metering customer is being harmed.”¹³

D. UCA and COSSA/SEIA Interventions

13. On December 8, 2023, the Colorado Office of the Utility Consumer Advocate (UCA) filed a notice of intervention of right in this matter. UCA’s notice includes a preliminary response to Staff’s petition and to Staff’s procedural motion.

¹¹ Public Service Response to Petition, p. 14.

¹² Public Service Response to Petition, p. 10.

¹³ Public Service Response to Petition, p. 25.

14. UCA asks the Commission to accept Staff's petition and render rulings as appropriate. UCA also suggests that Public Service also provide additional information beyond the information sought by the Commission in Decision No. C22-0742-I. For example, UCA asks why the Company's billing software currently able to handle customers with advanced meters on TOU schedules, but unable to handle the combination of advanced meters and net-metered solar systems. UCA further seeks a timeline of the Company's knowledge regarding the interaction between its billing systems and processes and advanced metering, including a description of when the Company realized that net-metered customers "require additional software implementation relative to other customers."¹⁴

15. With respect to procedures, UCA generally agrees with Staff that this Proceeding requires expedited consideration so that the rollout of advanced meters and TOU rates can be expanded to customers with net-metered solar systems prior to summer 2023. However, UCA recognizes that the Commission may wish to consider certain issues that are more fact-intensive than the legal questions set out in Staff's petition. Contrary to the "paper filings only" approach agreed to by Public Service and Staff as indicated in Staff's motion, UCA suggests that the Commission place certain issues on a separate, parallel procedural track or to bifurcate certain issues until after it considers the fundamental question raised in Staff's petition regarding the legality of the delayed advanced meter rollout for net-metered customers.

16. On December 14, 2022, the Colorado Solar and Storage Association and the Solar Energy Industries Association (COSSA/SEIA) jointly filed a motion to intervene in this matter. COSSA/SEIA appreciate Staff's call for an investigation and support the actions called for in its petition. They further agree that this proceeding calls for expedited consideration so that advanced

¹⁴ UCA Notice of Intervention and Response to Petition, p. 6.

meter deployment and TOU rates can be expanded to net metered customers before the high production summer season in 2023. COSSA/SEIA ask the Commission to immediately set an expedited procedural schedule in this matter for all of the reasons set forth by Staff.

E. Public Service’s Notice of Meter Deployment

17. The Commission noticed its intended deliberations on whether to accept or not to accept Staff’s petition at its weekly meeting on March 1, 2023. The Commission began discussing the matter but rendered no votes and instead decided to take up the matter again at its March 8, 2023, weekly meeting.

18. On March 6, 2023, Public Service filed a notice providing updated information regarding the rollout of advanced meters for customers who take service with net metering.¹⁵ Public Service confirms that the Company has begun installing advanced meters that are a part of the TOU net metered rate configuration. The timing and number of meters installed to this particular rate configuration is anticipated to be an average of 7,000 attempted meter installations per week through early summer 2023, depending on the availability of meters, weather, and accessibility to the customer’s premise and meters. Public Service further states that the Company and its implementation contractor have sufficiently staffed for the pace and volume of installations. Public Service adds that customers with planned advanced meter installations over the coming weeks have received pre-installation communications, and those expected to be installed in May

¹⁵ Public Service filed its notice in this Proceeding as well as in Proceeding No. 21A-0279E. In that proceeding, the Commission approved a settlement agreement amending the Company’s certificate of public convenience and necessity (CPCN) for the deployment of the advanced meters as approved, pursuant to another settlement agreement, in Proceeding No. 15A-0588E. In accordance with that settlement, Public Service is also subject to regular reporting requirements. As explained above, Public Service filed another notice in Proceeding No. 21A-0279E on August 3, 2022 regarding its deployment of advanced meters.

will receive communications shortly. Public Service also states that customers will also receive communications concerning the RE-TOU rate and the option to enroll early.

19. In the notice, Public Service offers to make its leadership and subject-matter experts available for a Commissioners' Information Meeting at the Commission's convenience

F. Findings and Conclusions

20. Subparagraph 1304(f)(III) of the Commission's Rules of Practice and Procedure, 4 *Colorado Code of Regulations* (CCR) 723-1 states that the Commission, at its discretion and prior to issuing notice, may dismiss or otherwise not accept any petition seeking a declaratory order.

21. We decline to accept Staff's petition. We find it unnecessary at this time to resolve the alleged dispute as framed by Staff. We also have procedural concerns about moving forward with a declaratory order process. While we share many of Staff's interests with respect to the issues raised, it is neither useful nor necessary to use a declaratory order proceeding to examine these problems. We further agree with UCA that there are many elements to this potential case that would likely require an evidentiary hearing and not just paper filings as suggested by Staff in its procedural motion. In terms of timing, Public Service is now in the "final waves" of advanced meter deployment.

22. Although we decline to accept Staff's petition, we are concerned about the potential problems that stem from Public Service failing to keep the stakeholders informed about its decisions over the course of its implementation of its plans for advanced meter rollout to delay deploying advanced meters for certain rate configurations simultaneously within geographic areas. It is troubling that Staff, UCA, COSSA/SEIA, and other interested stakeholders were not timely

informed of the Company's intentions to pass over net metered customers and that this matter developed into a controversy. The Commission relies on the settlement process to foster fairness, efficiency, and reasonable regulatory outcomes. Public Service's apparent failure to inform settling parties of its intentions to delay the implementation of certain rate configurations using advanced meters may impair the settlement process with these stakeholders now and in the future.

23. We also seek to ensure the rollout of advanced meters to net metered customers is implemented in accordance with the updated timeline Public Service provides in its notice filed on March 6, 2023. We therefore instruct Staff to closely monitor the roll out of the advanced meters and to report back to the Commission regarding the Company's progress every two months through the completion of the roll out as expected by the end of 2024.¹⁶ We also instruct Staff to monitor and report on the Company's communications to net metered customers regarding their transition to a TOU rate configuration to ensure that the option to enroll in TOU as soon as a meter is installed is clearly communicated to those impacted customers.

24. We further direct Public Service to refile its responses to the questions posed in Decision No. C22-0742-I in a manner that more usefully fosters understanding of the facts and circumstances surrounding the deployment of advanced meters for net metered customers and the associated billing requirements. Public Service shall address when the Company became aware of deficiencies in its billing system with respect to implementing net metering with TOU rate configurations and shall provide details, including a timeline, on the actions the Company has taken to address those specific deficiencies. Public Service shall also provide copies and dates of

¹⁶ For administrative efficiency, Staff shall file any written reports in Proceeding No. 21A-0279E, the same proceeding where Public Service has filed its most recent notices regarding deployment of advanced meters. Proceeding No. 21A-0279E will serve as the proceeding for noticing oral reports from Staff at the Commission's decision meetings.

its disclosures to stakeholders and to customers regarding (1) any differences for the rollout of advanced meters for customers within the geographic deployment regions based on rate configurations other than Schedule RE-TOU and (2) the necessary capabilities of its billing system and steps to address any deficiencies for those other rate configurations. We further direct the Company to present more thoroughly its analysis of the net metered customers who would have benefited and who would not have benefited financially from taking service under TOU rates. Public Service shall refile a response to Decision No. C22-0742-I no later than 30 days from the effective date of this Decision. We will determine whether to engage further with Public Service in a Commissioners' Information Meeting after reviewing the Company's refiled response.

II. ORDER

A. The Commission Orders That:

1. The Commission declines to accept the Petition for Declaratory Order (Petition) filed by Staff of the Colorado Public Utilities Commission (Staff) on October 25, 2022.
2. The motion requesting *en banc* consideration of the Petition and an expedited procedural schedule filed by Staff on October 25, 2022 is denied as moot.
3. Consistent with the discussion above, Staff shall closely monitor the roll out of the advanced meters for customers who take service with net metering and report on the progress Public Service Company of Colorado (Public Service) is making in the deployment of advanced meters and in the billing of net metered customers on time-of-use rate configurations.
4. Public Service shall directly respond to the requests for information in Decision No. C22-00742 in a refiled response to be submitted no later than 30 days from the effective date of this Decision, consistent with the discussion above.

5. The motion to intervene jointly filed by Colorado Solar And Storage Association and the Solar Energy Industries Association on December 14, 2022 is denied as moot.

6. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 8, 2023.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners