

Decision No. C23-0110-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22AL-0530E

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IN THE MATTER OF ADVICE LETTER NO. 1906 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO INCREASE BASE RATE REVENUES, IMPLEMENT NEW BASE RATES FOR ALL ELECTRIC RATE SCHEDULES, AND MAKE OTHER TARIFF CHANGES, TO BECOME EFFECTIVE DECEMBER 31, 2022.

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PROCEEDING NO. 22AL-0478E

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IN THE MATTER OF ADVICE LETTER NO. 1902 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO INCREASE THE TRANSMISSION COST ADJUSTMENT RIDER, TO BECOME EFFECTIVE JANUARY 1, 2023.

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**INTERIM COMMISSION DECISION  
GRANTING REQUESTS FOR INTERVENTION,  
ESTABLISHING THE PARTIES, GRANTING REQUESTS  
FOR *PRO HAC VICE* APPEARANCE, SCHEDULING A  
PREHEARING CONFERENCE, AND ADDRESSING THE  
DEVELOPMENT OF A PROCEDURAL  
SCHEDULE**

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Mailed Date: February 16, 2023

Adopted Date: February 15, 2023

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I. **BY THE COMMISSION**

A. **Statement**

1. On November 1, 2022, Public Service Company of Colorado (Public Service or Company) filed Advice Letter No. 1902-Electric in Proceeding No. 22AL-0478E with tariff sheets setting forth the applicable charge for its Transmission Cost Adjustment (TCA) for effect January 1, 2023.

2. On November 30, 2022, Public Service filed Advice Letter No. 1906-Electric in Proceeding No. 22AL-0530E with tariff sheets for its base rate schedules for electric utility service provided to Colorado customers.

3. By Decision No. C22-0833, issued on December 23, 2022, the Commission set for hearing and suspended the effective date of the tariff sheets filed with Advice Letter Nos. 1902-Electric and 1906-Electric for 120 days pursuant to § 40-6-111(1), C.R.S. The decision also established a notice and intervention period ending on January 20, 2023.

4. This Decision grants the requests for intervention in this matter, establishes the parties in this Proceeding, and grants requests for *pro hac vice* appearance. We schedule a prehearing conference on March 8, 2023, and direct Public Service to confer with the intervening parties to develop and file a proposed procedural schedule by February 27, 2023, consistent with the guidelines for the evidentiary hearing set forth below.<sup>1</sup>

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<sup>1</sup> At the February 15, 2023 Commissioners' Weekly Meeting, we adopted a separate decision directing Public Service to file Supplemental Direct Testimony addressing certain topics and providing additional information.

**B. Interventions and Parties to Proceeding**

5. Staff of the Colorado Public Utilities Commission (Staff) and the Colorado Office of the Utility Consumer Advocates (UCA) filed timely notices of intervention by right. UCA represents the public interest and specific interests of residential, small business, and agricultural customers under § 40-6.5-104, C.R.S. Staff and UCA detail several issues they plan to address, and both Staff and UCA request a hearing.

6. Pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1401(b) of the Commission's Rules of Practice and Procedure, no decision is required in response to appropriately filed notices of intervention by right. We acknowledge the notices of intervention of right, and that Staff and UCA are parties to this Proceeding.

7. The following parties filed timely requests for permissive intervention: The Kroger Company (Kroger); City and County of Denver (Denver); City of Boulder (Boulder); the Federal Executive Agencies (FEA); the Colorado Energy Consumers (CEC); the Coalition for Community Solar Access (CCSA); Walmart Inc. (Walmart); Climax Molybdenum Company (Climax); and Molson Coors Beverage Company (Molson Coors).

8. Kroger is a corporation engaged in the business of selling groceries at retail throughout the United States. One of the largest retail food companies in the United States, Kroger operates approximately 110 grocery stores in the state of Colorado through its King Soopers and City Market divisions. Kroger is a retail electric customer of Public Service. It has approximately 90 grocery stores and other facilities that purchase their electric supply from Public Service. Kroger states the change in rates proposed in Public Service's application may substantially affect the rates and charges paid by Kroger. Kroger maintains that its unique load characteristics means its interests are not adequately represented by any other party in this Proceeding.

9. Denver purchases electricity from Public Service, as do its residents and businesses. In 2021, Denver's municipal buildings accounted for approximately 104 GWh of electricity consumption at a cost of about \$9.8 million. Denver states, if the proposed rate increase is approved, it will substantially affect the amount that Denver pays for electric service. Denver also seeks to explore the impact of Public Service's application on Denver-owned facilities and its street and area lighting. Denver notes that these interests are not adequately represented by any other party in this Proceeding, and that its interests are different from other municipalities and local government entities.

10. Boulder is a large customer of Public Service that operates facilities which take service under Public Service rate schedules Small Commercial, Secondary General, Primary General, Street Lights, and Non-Metered Street Lights. Boulder states that the Boulder Climate Commitment targets a 70 percent reduction in economy-wide greenhouse gas emissions by 2030 versus a 2018 baseline and economy-wide carbon neutrality by 2035. Boulder further states, the issues discussed in this Proceeding may change the rates and total bills paid by the City of Boulder and by Boulder customers, which in turn, affects energy affordability as well as the economics of conservation, energy efficiency, and distributed energy resource investments made by the city, residents, and businesses. Boulder indicates it has pecuniary and tangible interests that may be substantially affected by the outcome of the Proceeding and that are not adequately represented by any other party.

11. FEA consists of federal agencies which have offices, facilities, and/or installations in Public Service's service area such as Buckley Space Force Base. FEA states that it expects its electric bills at these locations to be substantially impacted by the outcome of this Proceeding. FEA indicates that it may present testimony regarding the reasonableness of Public Service's requested base rate revenue increase and evidence supporting a reasonable return on

equity. FEA notes that there is no other entity authorized by federal statute to represent FEA in this Proceeding.

12. CEC is an unincorporated association comprised of large industrial and commercial energy consumers. All of CEC's members operate facilities within Public Service's service territory and purchase electricity and related energy services from the Company. Public Service projects that, under its rate proposal, the average monthly bill for CEC's members will increase between 5 and 7 percent, depending on class. CEC represents that, as some of Public Service's largest customers and major economic leaders in Colorado, with respective environmental and sustainability goals, affordable electric service is of paramount importance to CEC's members and their ability to continue to transact business in Colorado and meet their goals. CEC maintains that no party or putative intervenor could adequately represent CEC's interests due to the unique service requirements and characteristics of each CEC member, and of CEC as a group, and therefore CEC's interests cannot be adequately represented by any other party in this Proceeding.

13. CCSA is a 501(c)(6) nonprofit trade organization focused on supporting the community solar industry through legislative and regulatory efforts. CCSA's members include community solar garden (CSG) subscriber organizations and CSG owners. CCSA has over 110 member companies and is active in virtually all community solar markets as well as at the federal level. CCSA's primary concern in this Proceeding is the value of the CSG billing credit, which plays an integral role in the value of the CSG subscriptions its members sell. Because the calculation of the CSG billing credit is based on Public Service's retail rates, changes in the retail rates directly impact the value of the product CCSA's members sell. CCSA concludes; therefore, it has a pecuniary and tangible interest in the outcome of this Proceeding and one that is not represented by any other party. CCSA indicates it will make every effort to coordinate with aligned parties on specific issues and pleadings.

14. As a large customer of Public Service, Walmart operates 105 retail units, two distribution centers, and employs over 29,000 associates in Colorado. Collectively, these facilities consume over 159 million kWh of electricity on an annual basis, primarily in the Secondary General service class. Electricity is one of Walmart's largest costs of doing business in Colorado. Walmart states that its business and operations will likely be directly impacted by the Company's requested increase in rates and charges for electricity. Walmart indicates that, as a large commercial customer, its interests differ from those of other participants in this Proceeding. Given the unique configuration of its facilities within Public Service's service territory, Walmart contends its interests cannot be adequately represented by any other participant in this Proceeding.

15. Climax operates mines near Leadville and Empire, Colorado and receives electric service from Public Service under schedule Transmission General. Climax is one of Public Service's largest electric customers. Climax claims the decision in this Proceeding will directly and substantially affect its electricity costs for mining and milling molybdenum and therefore will have a significant impact on Climax's pecuniary and tangible impacts. In this Proceeding, Climax intends to examine the TCA issues as well as the proposed rate increases. Climax states that, as one of Public Service's largest electric customers, its interests would not be adequately represented unless Climax is allowed to intervene in this Proceeding.

16. Molson Coors operates its brewery and associated fabrication facilities in Jefferson County, Colorado. Molson Coors receives electric service from Public Service at its facilities in several different customer classes, including as a primary general standby customer, and operates its own natural gas fired turbines in addition to receiving electric service from Public Service. Molson Coors contends, as a primary general standby level customer and as a customer in other commercial classes in the proposed tariff, its unique interests will not be protected unless it is permitted to intervene in this Proceeding.

17. Rule 4 CCR 723-1-1401(c) of the Commission's Rules of Practice and Procedure sets forth the standard for permissive intervention and states, in relevant part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.

18. Further, Rule 4 CCR 723-1-1401(c) requires that a movant who is a "residential consumer, agricultural consumer, or small business consumer" must discuss in the motion whether the distinct interest of the consumer is either not adequately represented by the UCA or inconsistent with other classes of consumers represented by the UCA. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., the UCA has a statutory mandate to represent the interest of the Company's residential small business, and agricultural customers in Colorado.

19. We find that each entity seeking permissive intervention has sufficiently demonstrated that this Proceeding may substantially affect its pecuniary or tangible interests, as is required by Rule 1401(c). Each also has demonstrated that its interests would not otherwise be adequately represented. Therefore, we grant the requests for permissive intervention.

20. In addition to Public Service, the parties in this Proceeding include: Staff; UCA; Kroger; Denver; Boulder; FEA; CEC; CCSA; Walmart; Climax; and Molson Coors.

### **C. Requests for *Pro Hac Vice* Appearance**

21. An attorney who is not licensed to practice law in Colorado must be granted permission to appear *pro hac vice* in a Commission proceeding. Rule 1201(a) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, governs the admission of out-of-state attorneys. Rule 1201(a) requires compliance with Colorado Rule of Civil Procedure

(CRCP) 205.4, which itself expressly incorporates CRCP 205.3. As pertinent here, CRCP 205.3(2)(a) details what an out-of-state attorney must do to be permitted to appear *pro hac vice* and includes these requirements:

- (i) File a verified motion with the [administrative agency] requesting permission to appear;
- (ii) Designate an associated attorney who is admitted and licensed to practice law in Colorado;
- (iii) File a copy of the verified motion with the Clerk of the Supreme Court Office of Attorney Registration at the same time the verified motion is filed with the [administrative agency];
- (iv) Pay the required fee to the Clerk of the Supreme Court collected by the Office of Attorney Registration; and
- (v) Obtain permission from the [administrative agency] for such appearance.

22. Mr. Kurt J. Boehm on behalf of Kroger has moved for *pro hac vice* admission. After reviewing his verified motion, supplemental affidavit, and certificate of good standing filed by the Attorney Registration Office, we find he has met the above requirements and therefore grant the motion.

23. Mr. Thomas Jernigan, Ms. Holly Buchanan, and Captain Marcus Duffy, on behalf of the FEA, have moved for *pro hac vice* admission. Having reviewed the verified motion and certificate of good standing, we find they have met the above requirements and we grant the motion. FEA also filed a motion asking to excuse associated local counsel. We find good cause to grant the motion. FEA's associated local counsel is excused.

#### **D. Response Time to Motion for Extraordinary Protection**

24. On November 30, 2022, Public Service filed a motion for a protective order affording extraordinary protection for highly confidential customer information with Advice Letter No. 1906-Electric.

25. Responses to the motion shall be filed no later than seven days after the Mailed Date of this Decision.

**E. Prehearing Conference and Procedural Schedule**

26. We schedule a remote prehearing conference to be held on March 8, 2023, for the purpose of establishing a procedural schedule and establishing discovery procedures, as necessary.

27. We direct Public Service to confer with the parties to develop and propose a consensus procedural schedule including discovery procedures. Public Service shall file either a conferral report describing the efforts to reach consensus on a proposed procedural schedule or a motion to approve a proposed procedural schedule no later than February 27, 2023. Parties should consider and include a deadline for filing of Supplemental Direct Testimony. We direct Public Service and the parties to set the deadline for filing any settlement agreement to ensure that the Commission receives the terms of the settlement agreement and any supporting testimony no less than two weeks prior to the start of the evidentiary hearing.

28. The procedural schedule proposed by the parties should include an evidentiary hearing before the Commission *en banc* that includes all or some of the following days: July 6 and 7, 2023; July 10 through 14, 2023; the afternoon of July 19, 2023; and July 20 and 21, 2023.<sup>2</sup> This conclusion deadline for potential hearing dates is intended to ensure we are afforded the time required to render a final written decision establishing rates at the conclusion of the proceeding.

29. Hearings that conclude by July 2023 will enable us to engage in deliberations in August 2023 after the evidentiary hearing has concluded.

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<sup>2</sup> In our decision adopting a procedural schedule, we will extend the statutory suspension period of the effective date of the tariff sheets filed with Advice Letter No. 1906-Electric in accordance with § 40-6-111(1), C.R.S.

**II. ORDER**

**A. It Is Ordered That:**

1. The Motion to Intervene filed on January 17, 2023, by The Kroger Company is granted.

2. The Motion to Intervene filed on January 17, 2023 by the City and County of Denver is granted.

3. The Motion to Intervene filed on January 19, 2023, by the City of Boulder is granted.

4. The Motion to Intervene filed by the Federal Executive Agencies on January 19, 2023, is granted. The Motion to Appear *Pro Hac Vice* and the Motion to Excuse the Attendance of Associated Counsel contained within the same motion are granted.

5. The Motion to Intervene Permissively filed by the Colorado Energy Consumers, on January 20, 2023, is granted.

6. The Motion for *Pro Hac Vice* Admission of Kurt J. Boehm filed by The Kroger Company on January 20, 2023, is granted.

7. The Motion to Intervene filed by the Coalition for Community Solar Access on January 20, 2023, is granted.

8. The Motion for Intervention filed by the Walmart Inc. on January 20, 2023, is granted.

9. The Motion to Intervene filed by Climax Molybdenum Company on January 20, 2023, is granted.

10. The Motion to Intervene filed by Molson Coors Beverage Company on January 20, 2023, is granted.

11. The parties in this Proceeding include: Public Service Company of Colorado (Public Service); Staff of the Colorado Public Utilities Commission; the Colorado Office of the Utility Consumer Advocate; The Kroger Company; City and County of Denver; City of Boulder; the Federal Executive Agencies; the Colorado Energy Consumers; the Coalition for Community Solar Access; Walmart Inc.; Climax Molybdenum Company; and Molson Coors Beverage Company.

12. Public Service is directed to confer with the parties to develop a proposed procedural schedule, consistent with the discussion above. Public Service shall file a report addressing its conferral with the parties regarding a procedural schedule or a motion to approve a consensus procedural schedule no later than February 27, 2023.

13. A remote prehearing conference is scheduled as follows:

DATE: March 8, 2023

TIME: 1:00 p.m. until no later than 2:00 p.m.

PLACE: By video conference using Zoom at a link to be provided to parties by email and webcast to the public from Hearing Room A.

14. Responses to the Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Customer Information filed by Public Service on November 30, 2022, shall be filed no later than seven days after the Mailed Date of this Decision.

15. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
February 15, 2023.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,  
Interim Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

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TOM PLANT

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Commissioners