

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0471E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO TO IMPLEMENT DELIVERY OF ONE-SECOND TIME-STAMPED ELECTRIC USAGE DATA

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
GRANTING PERMISSIVE INTERVENTION**

Mailed Date: December 11, 2023

I. STATEMENT AND PROCEDURAL BACKGROUND

1. On September 22, 2023, Public Service Company of Colorado (Public Service or the Company) filed its verified application seeking approval from the Colorado Public Utilities Commission (Commission or PUC) “to deliver one-second time-stamped data through the Software Development Kit (SDK) established as a result of the Amended Advanced Grid Intelligence and Security (AGIS) Certification of Public Convenience and Necessity (CPCN).”¹ Public Service further requested that it be allowed “to defer incremental costs necessary to maintain SDK and provide technical support to third parties in a regulatory asset without carrying costs.”²

2. Contemporaneously with its Verified Application, the Company filed the direct testimony of the following individuals, along with numerous exhibits:

¹ Verified Application of Public Service Company of Colorado, filed Sept. 22, 2023, p. 1.

² *Id.*

- a) Michael Pascucci, Public Service’s Director of Regulatory and Strategic Analysis; and,
- b) Joel Miller, Public Service’s Director of Product Strategy and Development.

3. On September 25, 2023, the Commission’s Notice of Application Filed was sent to all interested persons and entities. The Notice stated that Public Service had filed direct testimony with its Verified Application and was seeking a Commission decision within 120 days of the Application being deemed complete.³ In addition, the Notice set a 30-day window within which interested persons could intervene, and a 37-day window within which Commission Staff was to file its Intervention.

4. On October 17, 2023, the Colorado Office of the Utility Consumer Advocate (UCA) filed its Notice of Intervention of Right, Request for Hearing, and Entry of Appearances. UCA identified three primary issues it seeks to investigate in this Proceeding.

5. On October 25, 2023, the Trial Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing. Staff identified five key issues it intends to raise and address in this proceeding.

6. Finally, also on October 25, 2023, Mission:data Coalition, Inc. (Mission:data) moved to permissively intervene in this Proceeding. No party has objected to Mission:data’s Motion to Permissively Intervene.

7. On November 1, 2023, the Commission deemed the Application complete by minute entry and referred it to an Administrative Law Judge (ALJ) for disposition. Subsequently, this Proceeding was assigned to the undersigned ALJ.

8. The interventions by right of UCA and Staff are noted.

³ Notice of Application Filed, filed Sept. 25, 2023.

II. MISSION:DATA'S MOTION TO PERMISSIVELY INTERVENE

9. In its Motion to Permissively Intervene, filed on October 25, 2023, Mission:data identifies itself as a “not-for-profit social welfare organization” composed of “approximately thirty members” who are “primarily software companies that offer innovative, consumer-facing products and services.”⁴ Using data compiled by the Company through its advanced metering infrastructure [AMI], Mission:data’s members have developed software programs that enable consumers to “better manage” their energy use “to save energy, reduce carbon emissions, and cut costs.”⁵

10. Mission:data notes that it was a “contributing participant” in earlier Public Service SDK proceedings, citing to Proceeding Nos. 16A-0588E and 21A-0279E. In addition, it states that it has contributed to other proceedings, as well, including Proceeding Nos. 14R-0394EG and 15A-0789E.

11. Mission:data asserts that its intervention is necessary in this Proceeding to enable it to protect its members’ and consumers’ interests in obtaining real-time data from Public Service. Mission:data asserts that the Company could explore direct upload transfers of real-time data from its customers’ AMI meters but has chosen not to pursue this option. Mission:data contends that such real-time data obtained through AMI technology would spare “ratepayers the unnecessary expense of purchasing a separate, dedicated device in their home in order to transfer, and make use of, real-time electric usage data.”⁶ It suggests that its presence in this Proceeding would allow it to push for this type of data collection.

12. In addition, Mission:data asserts that Public Service has not provided “‘reasonable terms and conditions under which customer-authorized third parties are eligible’ to receive real-

⁴ Motion to Permissively Intervene of Mission:data Coalition, Inc., filed Oct. 25, 2023, ¶ 3, p. 2.

⁵ *Id.*

⁶ *Id.*, ¶ 6, p. 3.

time usage data from advanced meters” as was allegedly required under a previous AGIS settlement.⁷ It seeks to address this issue, as well, in this Proceeding.

13. Two classes of parties may intervene in proceedings such as this: parties with a statutory right; or a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding and would not otherwise be adequately represented (permissive intervention). Rule 1401(b) and (c), of the Commission’s Rules of Practice and Procedure, 4 *Code of Colo. Regulations* (CCR) 723-1; see § 40-6-109(1), C.R.S., *RAM Broadcasting of Colo. Inc., v. Pub. Utils. Comm’n*, 702 P.2d 746, 749 (Colo. 1985) (“This provision creates two classes that may participate in [Commission] proceedings: those who may intervene as of right and those whom the Commission permits to intervene.”).

14. Commission Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, requires persons seeking permissive intervention to show the following:

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. . . . The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.

⁷ *Id.*

15. The requirement in Rule 1401(c) requiring persons or entities seeking permissive intervention in a proceeding to demonstrate that their interests “would not otherwise be adequately represented” is similar to Colorado Rule of Civil Procedure 24(a), which provides that even if a party seeking intervention in a case has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties. *See Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass’n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case’s judgment. *See Denver Chapter of the Colo. Motel Ass’n v. City & Cnty. of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city). The test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative. The presumption of adequate representation can be overcome by evidence of bad faith, collusion, or negligence on the part of the representative. *Id.*; *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

16. In its motion, Mission:data states that the Company’s provision of terms to which its customers must agree before “connecting a device to their meter . . . creates business uncertainty” for its members which could lead to “decreased investment of private capital into energy management offerings in Colorado.”⁸ It thus indicates that the Company’s Verified Application could negatively affect the pecuniary interests of its members.

17. Because of its members’ “unique interests,” Mission:data asserts that its interests cannot be adequately represented by any other party to this Proceeding.

⁸ *Id.* at ¶ 6, p. 4.

18. Finally, Mission:data suggests that because of its “technical expertise and national advocacy in regulatory proceedings concerning advanced metering and distributed intelligence,” its participation in this Proceeding could assist the Commission in developing a “more-informed policy” and lead to an administratively efficient resolution of this Proceeding.⁹

19. No parties have objected to Mission:data’s intervention in this Proceeding.

20. The ALJ finds that the methods of data collection at issue in this Proceeding could substantially affect the pecuniary interests of Mission:data and its members.

21. The ALJ further finds that Mission:data appears to have no financial relationship with the Company, represents the interests of software developers other than the Company, and because it is not a consumer whose interests are protected by the UCA, its interests may not otherwise be adequately represented and protected in this Proceeding.

22. For these reasons, Mission:data’s motion to intervene will be granted.

23. The parties to this Proceeding are therefore the Company, Trial Staff, UCA, and Mission:data.

III. ESTABLISHING PROCEDURAL SCHEDULE

24. In order to move this Proceeding forward, the undersigned ALJ encourages the parties to confer and attempt to reach a consensus regarding the type of evidentiary hearing they prefer and propose a procedural schedule to govern this Proceeding. If the parties are unable to do so, the undersigned ALJ will set a prehearing conference to discuss applicable deadlines to govern this Proceeding.

⁹ *Id.* at ¶¶ 8-9, pp. 4-5.

IV. ORDER

A. It Is Ordered That:

1. The Motion to Permissively Intervene filed by Mission:data Coalition, Inc. (Mission:data), on October 25, 2023, is granted.
2. The Interventions of Right filed by the Office of the Utility Consumer Advocate (UCA) and Trial Staff of the Commission are acknowledged.
3. The parties to this Proceeding are Public Service Company of Colorado, Trial Staff, UCA, and Mission:data.
4. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

Rebecca E. White,
Director