

Decision No. R24-0003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23F-0483E

TOM JUBIN AND LIZ ZERGA,

COMPLAINANTS,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
DISMISSING COMPLAINT WITH PREJUDICE**

Mailed Date: January 3, 2024

I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY

A. Summary

1. This Decision acknowledges that Mr. Tom Jubin and Ms. Liz Zerga (Complainants) have withdrawn their Complaint filed on September 28, 2023 (Complaint), dismisses the Complaint and closes this Proceeding.

B. Procedural History

2. On September 28, 2023, Complainants filed their Complaint with the Colorado Public Utilities Commission (Commission) against Xcel Energy.

3. On September 29, 2023, the Commission Director issued an Order to Answer or Satisfy and scheduled the Complaint for an evidentiary hearing before an Administrative Law Judge (ALJ) for December 12, 2023.

4. On October 11, 2023, the Commission referred this matter to an ALJ for disposition.

5. On October 18, 2023, Public Service Company of Colorado's (Public Service or the Company) filed a Motion to Dismiss to Dismiss Formal Complaint with Prejudice (Motion to Dismiss).

6. On November 1, 2023, Complainants filed a response to the Motion to Dismiss, (Response to Motion to Dismiss).

7. On November 6, 2023, the ALJ denied the Motion to Dismiss; corrected the caption to reflect the correct Respondent (Public Service); rescheduled the evidentiary hearing for January 18, 2024; required the parties to make a filing indicating the manner in which they prefer the hearing to be held (fully in-person, fully remotely, or a combination of the two) by November 15, 2023.¹

8. On November 15, 2023, Public Service filed a Motion to Establish Parameters for the Procedural Schedule and Notice on the Parties' Preferred Format for the Evidentiary Hearing (Motion for Procedures). The Motion for Procedures states that the parties conferred and agree that the January 18, 2024 hearing should be held in-person, and asks that the parties be ordered to file written testimony as a part of the procedural schedule for this matter.

9. On November 17, 2023, Complainants filed a Response to Xcel's Procedural Filing (Response to Motion for Procedures), acknowledging that the hearing should be held in person

¹ Decision No. R23-0748-I (mailed November 6, 2023).

and objecting to Public Service's request that the parties be required to file written testimony in advance of the evidentiary hearing.

10. On November 21, 2023, Public Service filed a public and confidential Answer of Public Service Company of Colorado to Formal Complaint (Answer), and a Motion to Accept the Answer to the Formal Complaint as Timely Filed (Motion to Accept Answer).

11. On December 7, 2023, Complainants filed a Notice of Withdrawal of Formal Complaint (Withdrawal).

II. FINDINGS AND CONCLUSIONS

12. The Withdrawal states that Complainants withdraw their Complaint with prejudice because the underlying dispute has been amicably resolved.² The Withdrawal states that Public Service does not object to the Complaint being withdrawn.³ In support, Complainants state that Commission Rule 1309(d) provides that applications and petitions may be withdrawn without leave of the Commission up to 45 days prior to a hearing, and though this Rule does not address complaints, the Commission has relied on this Rule as guidance to allow formal complaints to be withdrawn without leave to do so.⁴ The Withdrawal adds that no party is prejudiced by withdrawing the Complaint.

13. The ALJ acknowledges that Complainants withdraw their Complaint with prejudice, and for that reason, dismisses the Complaint with prejudice.

14. Given that the Complaint is dismissed with prejudice, the other pending Motions are denied as moot.

² Withdrawal at 1.

³ *Id.*

⁴ *Id.* at 1-2, citing Rule 1309(d) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

15. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order, and transmits to the Commission, the record in this proceeding along with this written recommended decision.

III. ORDER

A. The Commission Orders That:

1. Complainants' withdrawal of their formal Complaint filed on September 28, 2023 (Complaint) with prejudice is acknowledged.

2. The Complaint in this Proceeding is dismissed with prejudice.

3. The Motion to Establish Parameters for the Procedural Schedule and Notice on the Parties' Preferred Format for the Evidentiary Hearing filed on November 15, 2023, and Motion to Accept the Answer to the Formal Complaint as Timely Filed (filed on November 21, 2023) are denied as moot.

4. Proceeding No. 23F-0483E is closed.

5. No more than 30 days after this Recommended Decision becomes a Commission Decision, if that is the case, Black Hills must file, on not less than two business days' notice, a compliance advice letter and all tariff sheets authorized in this Proceeding. The advice letter and tariff must comply in all substantive respects to this Decision to be filed as a compliance filing on shortened notice. The compliance filings must be made in a new advice letter proceeding and comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire before the effective date.

6. No more than 30 days after this Recommended Decision becomes a Commission Decision, if that is the case, Black Hills must also: file an updated version of its 2024 - 2026 Transportation Electrification Plan (Plan) to reflect all terms and conditions that are approved as a result of this Proceeding; and make a filing describing in detail how it will estimate the electric vehicle revenues to be included in the retail rate cap calculation, consistent with the above discussion. The updated version of the 2024 – 2026 Plan must include a summary of specific issues that have arisen in this proceeding that will be addressed through quarterly stakeholder meetings, semi-annual reports, and additional working group meetings as needed. Proceeding No. 23A-0244E is closed.

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

8. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

9. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

10. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

11. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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 'Rebecca E. White'.

Rebecca E. White,
Director