

Decision No. R24-0153-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0636G

IN THE MATTER OF ADVICE LETTER NO. 1027 – GAS FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 6 – GAS TARIFF TO UPDATE ELIGIBILITY REQUIREMENTS TO RECEIVE A CONSTRUCTION ALLOWANCE, TO REQUIRE FULL PAYMENT OF THE METER SET, AND TO ADDRESS VOLUNTARY PERMANENT TERMINATIONS OF GAS SERVICE, TO BECOME EFFECTIVE FEBRUARY 1, 2024.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
FURTHER SUSPENDING TARIFF SHEETS' EFFECTIVE
DATE, ADDRESSING INTERVENTIONS,
SCHEDULING EVIDENTIARY HEARING, AND
ESTABLISHING DEADLINES AND PROCEDURES**

Mailed Date: March 8, 2024

I. STATEMENT, SUMMARY AND BACKGROUND

A. Summary

1. This Decision further suspends the effective date for the tariff sheets associated with the Company's Amended Advice Letter No. 1027 filed on January 5, 2024 (Amended Advice Letter) by 130 days; addresses all interventions filed in this Proceeding; schedules a fully remote evidentiary hearing for June 5 and 6, 2024; and establishes deadlines and procedures relating to the evidentiary hearing.

B. Procedural History

2. On December 29, 2023, Public Service Company of Colorado (Public Service or the Company) filed Advice Letter No. 1027 with associated tariff sheets establishing a February 1, 2024 effective date for the same.

3. At the same time, the Company also filed a Motion of Public Service Company of Colorado for Commission Approval of an Alternative Form of Notice (Motion for Alternative Notice).

4. On January 5, 2024, the Company filed its Amended Advice Letter and associated tariff sheets, which maintained the February 1, 2024 effective date for the tariff sheets.

5. On January 11, 2024, the Commission granted the Motion for Alternative Notice.¹ That same day, the Company filed two Affidavits, one attesting to the alternative form of notice that it provided, and the other affirming that alternative notice is complete.

6. On January 26, 2024, the Commission suspended the effective date of the tariff sheets filed with the Amended Advice Letter by 120 days to May 31, 2024; set the tariff sheets for a hearing; waived the December 31, 2023 deadline in Rule 4210(d) of the Commission's Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4; established February 23, 2024 as the intervention deadline; and referred this matter to an administrative law judge (ALJ) for disposition.²

7. On January 31, 2024, the Colorado Office of the Utility Consumer Advocate (UCA) filed a Notice of Intervention as a Matter of Right, and Entry of Appearances of the Office of the Utility Consumer Advocate (the UCA's Intervention).

¹ Decision No. C24-0028-I (mailed January 11, 2024).

² Decision No. C24-0062 at 2-6 and 9 (mailed January 26, 2024).

8. On February 23, 2024, Colorado Public Utilities Trial Staff (Staff) filed a Notice of Intervention of Right by Trial Staff of the Commission, Entry of Appearance, and Notice Pursuant to Rule 1007(a) and Rule 1401 (Staff’s Intervention).

9. That same day, Western Resource Advocates (WRA) filed a Motion for Permissive Intervention of Western Resource Advocates (WRA’s Intervention).

10. On March 5, 2024, the Company filed an Unopposed Motion of Public Service Company of Colorado to Approve Procedural Schedule and Request for Waiver of Response Time (Motion).

11. To date, the Company has made no filings responding to any of the above Interventions.

II. FINDINGS AND CONCLUSIONS

A. Interventions

12. A party objecting to an intervention as of right may do so by filing a motion to strike such an intervention.³ A party objecting to a motion seeking to permissively intervene may do so by filing a response to the same within seven days after service of the motion to permissively intervene.⁴ The Commission may deem a failure to file a response to a motion as confessing the motion.⁵

13. Because the Company made no filings objecting to any of the Interventions, the ALJ deems the Interventions confessed and treats them as unopposed.

14. Two classes of parties may intervene in proceedings such as this: parties with a legally protected right that may be impacted by the proceeding (intervention of right), and parties

³ Rule 1401(b), 4 CCR 723-1.

⁴ Rule 1401(c), 4 CCR 723-1.

⁵ Rule 1400(d), 4 CCR 723-1.

with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).⁶ Commission Trial Staff may intervene by right in any Commission proceeding without having to establish that it has a legally protected right that may be impacted by the proceeding.⁷

15. Based on the above authorities, the information in their respective Interventions and because their Interventions are unopposed, the ALJ finds that the UCA and Staff have properly intervened as of right. As such, they are acknowledged as parties to this Proceeding.

16. WRA's Intervention asserts that it has an interest in protecting the environment and ratepayers by seeking to reduce fossil gas emissions from the built environment, including reductions from gas use in residential and commercial buildings and that such tangible interests will be impacted by this Proceeding.⁸ It explains that the line extension policies at issue here will impact future emissions and growth.⁹ WRA argues that because it has been involved in Commission proceedings for over 30 years, (including those relevant to the issues here), and was involved with activities at the General Assembly that led to the statutory changes which the Company seeks to implement through its Amended Advice Letter, it is uniquely positioned to represent its interests here.¹⁰ It asserts that as a conservation organization with unique expertise in Colorado utility regulation, no other party can adequately present its interests here.¹¹ To the extent that the UCA's interests overlap with its interests, WRA promises to coordinate closely with the

⁶ Rule 1401(b) and (c), of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. See § 40-6-109(1)(a)(I), C.R.S. Those seeking to permissively intervene must meet several additional requirements in Rule 1401(c), 4 CCR 723-1.

⁷ Rule 1401(b) and (c), 4 CCR 723-1.

⁸ WRA's Intervention at 3 and 5.

⁹ *Id.* at 5.

¹⁰ See *id.* at 3.

¹¹ *Id.* at 5-6.

UCA when their interests align to avoid unnecessary duplication or undue burden on the Company and other parties.¹²

17. WRA's asserted tangible interests in this Proceeding are a stretch. Likewise, its argument in support of its assertion that no other party, (including the UCA), can adequately represent its interests are questionable. Nonetheless, because the Company does not object to WRA's Intervention, and given WRA's experience in prior Commission proceedings, the ALJ grants WRA's Intervention.

18. Based on the foregoing, the parties to this Proceeding are: Public Service, the UCA, Staff, and WRA.

B. Further Suspension of Tariff Sheets' Effective Date

19. Under § 40-6-111(1)(b), C.R.S., the Commission may suspend the effective date of a tariff sheet by a maximum total of 250 days.

20. As noted, by Decision No. C24-0062, the Commission suspended the tariff sheets' effective date by 120 days to May 31, 2024. The ALJ finds that additional time is necessary to hold an evidentiary hearing; establish deadlines that the parties can meet; allow the parties to fully develop the record and conduct discovery; issue a recommended decision; and for the Commission to issue a final decision before the tariff sheets' current effective date. As such, the ALJ further suspends the effective date of the tariff sheets' associated with the Amended Advice Letter for an additional 130 days (for a total of 250 days) to October 8, 2024, as permitted by § 40-6-111(1)(b), C.R.S.

¹² *Id.* at 6.

C. Procedural Schedule and Evidentiary Hearing

21. The Motion states that the Company conferred with Staff, the UCA and WRA on a proposed procedural schedule, and that all parties agree to the schedule proposed in the Motion.¹³ Since the Motion is unopposed, the Company asks that the response time to it be waived.¹⁴

22. Based on the above, the ALJ concludes that good cause exists to waive the response time to the Motion and does so.¹⁵

23. The Motion states that the parties prefer that the evidentiary hearing be held as a fully remote hearing.¹⁶ The Motion outlines the following proposed procedural schedule:

Event	Proposed Date or Deadline
Direct Testimony	March 29, 2024
Answer Testimony	April 23, 2024
Rebuttal and Cross-Answer Testimony	May 16, 2024
Stipulations and Settlement Agreements	May 22, 2024
Non-Testimonial Exhibits	May 22, 2024
Exhibit and Witness Lists	May 22, 2024
Corrected Testimonial Exhibits and Joint Witness Examination Matrix	May 22, 2024
Pre-Hearing Motions	May 23, 2024
Settlement Testimony	May 24, 2024
Responses to Pre-Hearing Motions	May 30, 2024
Remote Evidentiary Hearing	June 5 and 6, 2024
Statements of Position	June 21, 2024 ¹⁷

¹³ Motion at 1.

¹⁴ *Id.* at 4.

¹⁵ See Rules 1400(b) and 1308(c), 4 CCR 723-1.

¹⁶ Motion at 3.

¹⁷ *Id.*

24. For the most part, the ALJ finds the above proposed schedule is reasonable and appropriate. That said, the parties suggest that the deadline for Settlement Testimony fall after the deadlines to file exhibit and witness lists, non-testimonial exhibits, and prehearing motions.¹⁸ This presents a conflict because Settlement Testimony is typically identified as an exhibit, which means that the proposed schedule suggests a later deadline for Settlement Testimony exhibits than the deadline to file exhibit and witness lists. What is more, Settlement Testimony may impact the non-testimonial hearing exhibits that parties may wish to present and could be the basis for a prehearing motion. As such, the deadline for Settlement Testimony must be before deadlines to file non-testimonial hearing exhibits, exhibit and witness lists, and prehearing motions. In determining how to modify the proposed deadlines to address the above concerns, the ALJ chooses not to establish earlier deadlines than proposed. This ensures the parties have the time they believe they need to create and file written testimony and negotiate a potential stipulation or settlement agreement. Instead, in the ordering paragraphs below, the ALJ establishes slightly later deadlines than proposed, which, in some cases, results in tight deadlines (particularly as to responses to prehearing motions).

25. The ALJ approves the parties' request that the hearing be held as a fully remote hearing. The hearing will be held using the Zoom web-based platform. Because the hearing will be fully remote, documentary evidence will be presented electronically using a spreadsheet with hyperlinks to the parties' exhibits as they appear in the administrative record.¹⁹ This spreadsheet will be distributed to the parties before the hearing; the parties must review the

¹⁸ *Id.*

¹⁹ As to exhibits that need not be pre-filed (those that may be used to impeach, refresh recollection, or on rebuttal), the parties will present those using the web-based platform, box.com. Such exhibits must also be presented electronically.

spreadsheet and confirm before the hearing that it includes the exhibits they intend to offer into evidence.

26. Attachment A hereto includes important technical information and requirements to facilitate the remote evidentiary hearing. Persons wishing to observe but not participate in the hearing are encouraged to observe the hearing via the Commission's webcast, rather than join the Zoom hearing.²⁰ This will help minimize background noise and avoid issues that may arise should the ALJ need to hold a confidential or highly confidential hearing session.

27. Attachment B includes information and requirements to facilitate electronic evidentiary presentations at the hearing. Many requirements in Attachment B apply to formatting, marking, and filing exhibits, and are critical to ensure a smooth evidentiary presentation. The ALJ has observed parties in other proceedings repeatedly failing to comply with these formatting, marking, and filing requirements. This has resulted in a tremendous waste of resources—both by Commission support staff, who have been forced to carefully review each filed exhibit and contact parties to point out errors—and by parties who have to reformat and refile exhibits. It has also created unnecessary confusion as to which exhibits will be offered into evidence, particularly when parties incorrectly number their exhibits, fail to correctly mark revised exhibits, fail to file a public version of confidential or highly confidential exhibits, or fail to correct mark confidential and highly confidential exhibits. These errors have persisted despite continual reminders in procedural decisions such as these. As such, the parties *should not assume* that they have been correctly following the marking, filing and formatting requirements in Attachment B. It is vitally important that the parties take the time to *carefully* review and comply with Attachment B to this Decision.

²⁰ Parties wishing to observe the hearing via webcast may do so by going to the following link: <https://puc.colorado.gov/webcasts> and selecting the assigned hearing room's webcast. The Commission's public calendar will include information on the assigned hearing room and may be found at: <https://puc.colorado.gov/>, under the "Calendar of Events."

28. To minimize the potential that the hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the parties' counsel by email before the hearing, and the parties will be prohibited from distributing that information to anyone not participating in the hearing.²¹ Counsel and the parties are responsible for ensuring that their witnesses receive the Zoom information needed to join the hearing.

29. *The parties are on notice* that consistent with Commission practice, friendly cross-examination will not be permitted during the evidentiary hearing.

III. **ORDER**

A. **It Is Ordered That:**

1. Consistent with the above discussion and findings, the effective date of the tariff sheets associated with the Amended Advice Letter No. 1027 filed on January 5, 2024 (Amended Advice Letter) is suspended for an additional 130 days, for a total of 250 days, to October 8, 2024, as permitted by § 40-6-111(1)(b), C.R.S.

2. Colorado Public Utilities Commission Trial (Staff) and the Colorado Office of the Utility Consumer Advocate (UCA) are acknowledged as parties of right to this Proceeding. Consistent with the above discussion, the Motion for Permissive Intervention of Western Resource Advocates (WRA) is granted. Based on the foregoing, in addition to Public Service Company of Colorado (Public Service), the parties to this Proceeding are Staff, the UCA and WRA.

3. The response time to the Unopposed Motion of Public Service Company of Colorado to Approve Procedural Schedule and Request for Waiver of Response Time filed on

²¹ Approximately one week before the hearing, counsel will receive an email with information needed to join the hearing at the email addresses on file with the Commission for this proceeding. Counsel must ensure that the Commission has their most current email address.

March 5, 2024 (Motion) is waived. The Motion is partially granted consistent with the above discussion.

4. An evidentiary hearing on the Amended Advice Letter and associated tariff sheets is scheduled as follows:

- DATES: June 5 and 6, 2024
- TIMES: 9:00 a.m. each day
- PLACE: By videoconference using Zoom.

5. The parties are responsible for sharing the link, meeting ID code, and passcode with witnesses and others participating in the hearing remotely. Participants in the hearing may not distribute the link, meeting ID code, and passcode to anyone not participating in the hearing.

6. All parties must comply with the requirements in Attachments A and B to this Decision, which are incorporated into this Decision.

7. Non-participants in the evidentiary hearing may observe the hearing live through the Commission’s webcast for the Hearing Room assigned for each of the above hearing dates, which may be accessed at this link: <https://puc.colorado.gov/webcasts>.

8. **Direct Testimony Deadline.** Public Service must file and serve its direct testimony by 5:00 p.m. on March 29, 2024.

9. **Answer Testimony Deadline.** Interveners must file and serve their answer testimony by 5:00 p.m. on April 23, 2024.

10. **Rebuttal and Cross-Answer Testimony Deadline.** Public Service’s rebuttal testimony, and Interveners’ cross-answer testimony must be filed and served by 5:00 p.m. on May 16, 2024.

11. **Deadline for Stipulations and Settlement Agreements.** The parties must file and serve any stipulations and settlement agreements by 5:00 p.m. on May 22, 2024.

12. **Corrections, Modifications, and Amendments to Testimonial Exhibits.**

a. By 5:00 p.m. on May 22, 2024, the parties must file and serve any corrected, modified, or amended testimonial exhibits and attachments thereto (*i.e.*, corrections to answer, rebuttal, and cross-answer testimony and attachments), except for corrections to Settlement Testimony. This will allow enough time for staff to create and circulate the hyperlinked spreadsheet that will be used during the hearing to present exhibits. It is the parties' responsibility to review the hyperlinked spreadsheet that will be used during the hearing to present exhibits to ensure that it correctly includes all the exhibits that the parties intend to offer into evidence during the hearing.

b. The parties may make corrections to testimonial exhibits and attachments thereto without filing a motion seeking leave to do so. Corrections include minor changes, such as fixing typographical or formatting errors. Corrections do not include material or substantive changes. Material or substantive changes to a testimonial hearing exhibit or attachment thereto amount to amending or modifying such documents. Any party wishing to amend or modify a testimonial exhibit or attachment thereto must file a motion establishing good cause; such a motion must be filed as soon as the party becomes aware of the need to amend or modify the filing. The parties must confer with each other prior to filing such a motion. Unreasonable delay in filing such a motion is grounds to deny the motion.

13. **Deadline for Settlement Testimony.** By 5:00 p.m. on May 24, 2024, the parties must file and serve testimony in support of or in response to any settlement agreement that is filed.

14. **Deadline for Non-Testimonial Hearing Exhibits.** By 5:00 p.m. on May 28, 2024, the parties must file and serve any non-testimonial hearing exhibits that they plan to offer into

evidence (*i.e.*, exhibits not already filed per other deadlines). The parties are not required to pre-file and serve hearing exhibits which may be used *solely* for impeachment, to refresh recollection, or for rebuttal. *The parties are on notice* that if they do not prefile an exhibit for any of these reasons, they must be prepared to establish at hearing that the exhibit is being used for impeachment or to refresh recollection consistent with the requirements of Rules 612 and 613 of the Colorado Rules of Evidence, or for rebuttal. Any party may use any other party's hearing exhibits during the course of the hearing and should not file them separately. May 28, 2024 is the last date by which exhibits must be filed in order to be included in the spreadsheet used during the hearing. Such filings must comply with the specific requirements in Attachment B.

15. **Deadline for Hearing Exhibit and Witness Lists.** By 5:00 p.m. on May 29, 2024, the parties must file and serve complete exhibit and witness lists. Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information. Exhibit lists must identify the hearing exhibit number, the full title of each hearing exhibit *and attachment thereto* and include a brief description of each hearing exhibit *and attachment thereto* that the party intends to offer into evidence during the hearing. Describing an exhibit or attachment solely by identifying the exhibit and attachment number **does not meet** this requirement (*e.g.*, describing it as "Hearing Exhibit 100" or "Hearing Exhibit 100, Attachment ABC-1" without information as to substantive nature or content of the exhibit).

16. **Deadlines for Prehearing Motions and Responses Thereto.** By 5:00 p.m. on May 29, 2024, the parties must file and serve any prehearing motions; responses to prehearing motions must be filed by 12:00 p.m. on June 3, 2024.

17. **Deadline for Joint Witness Examination Matrix.** By May 31, 2024, the parties must file a joint witness examination matrix listing all the witnesses the parties anticipate will

testify at the hearing, and the anticipated amount of time each party will use to examine the witnesses. To the extent practicable, the witnesses should be listed in the order in which they will be called. The parties also must assume that the Administrative Law Judge will use some time to examine witnesses.

18. **Deadline for Statements of Position.** By 5:00 p.m. on June 21, 2024, the parties must file and serve their Statements of Position.

19. **Hearing Exhibit Number Block Assignments.** In order to efficiently organize exhibits that will be presented during the evidentiary hearing, all parties must use a unified numbering system for all hearing exhibits, consistent with the directions in Attachment B, using hearing exhibits within their assigned exhibit number blocks. The parties are assigned the following hearing exhibit numbers:

Party	Assigned Hearing Exhibit Numbers
Public Service	100 to 299
UCA	300 to 399
Staff	400 to 499
WRA	500 to 599

20. Any party requiring more exhibit numbers than assigned may use the same numerical sequence of exhibit numbers assigned to them, but in the 1000 range (*e.g.*, Public Service will use hearing exhibit numbers 1100-1299; the UCA will use hearing exhibit numbers 1300-1399, *etc.*). Hearing Exhibit 600 is reserved for the hyperlinked spreadsheet that will be used during the hearing to present evidence.

21. 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 'Rebecca E. White'.

Rebecca E. White,
Director