

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

PROCEEDING NO. 23D-0591E

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IN THE MATTER OF THE COLORADO COMMUNICATION AND UTILITIES ALLIANCE, THE TOWN OF MORRISON, AND THE CITIES OF ARVADA, AURORA, CENTENNIAL, NORTHGLENN, AND WHEAT RIDGE'S PETITION FOR A DECLARATORY ORDER REGARDING PUBLIC SERVICE COMPANY OF COLORADO'S CUSTOMER OWNED LIGHTING TARIFF AND PAYMENT RESPONSIBILITY FOR STATE AND INTERSTATE HIGHWAY STREETLIGHTING.

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**INTERIM DECISION ESTABLISHING  
DEADLINES AND PROCEDURES**

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Issued Date: August 14, 2024

**I. STATEMENT**

**A. Procedural Background<sup>1</sup>**

1. On December 4, 2023, the Colorado Communication and Utilities Alliance, the Town of Morrison, and the Cities of Arvada, Aurora, Centennial, Northglenn, and Wheat Ridge (collectively the “Local Governments”) filed a Petition for Declaratory Order (“Petition”) initiating this Proceeding. In the Petition, the Local Governments request that the Colorado Public Utilities Commission (“Commission” or “PUC”) resolve uncertainty regarding which entities are responsible for the maintenance and illumination of streetlights within their municipal boundaries. The Local Governments argue that the State Highway Act and the terms of Public Service Company of Colorado’s (“Public Service”) Customer Owned Lighting Tariff (“COL Tariff”) require that payment responsibility for streetlights on state and interstate highways remain with

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<sup>1</sup> Only the procedural history necessary to understand this Decision is included.

the Colorado Department of Transportation (“CDOT”) unless certain conditions of transfer under the Public Service COL Tariff are met.

2. On December 19, 2023, Public Service and CDOT filed a Joint Motion to Stay the Commission’s Determination of Whether to Accept or Deny the Petition (“Joint Motion”).

3. By Decision No. C23-0861-I, issued December 22, 2023, the Commission construed the Joint Motion as a public comment. Decision No. C23-0861-I also set a deadline of January 3, 2024, by which to file any responses to the Petition.

4. On January 3, 2024, CDOT filed a response to the Petition arguing that the Commission lacks jurisdiction to consider the Petition and requesting that the Petition be rejected in its entirety and dismissed.

5. Public Service also filed a response on January 3, 2024. While it acknowledged CDOT’s jurisdictional concerns, Public Service advocated that the Commission either reject the Petition or limit the scope of the issues to be considered.

6. On February 7, 2024, the Commission issued Decision No. C24-0079-I, accepting the Petition and denying CDOT’s request that the Commission reject and dismiss the Petition.

7. Decision No. C24-0079-I also acknowledged Public Service’s Intervention as of Right, and granted CDOT’s motion to permissively intervene in this Proceeding.

8. On July 19, 2024, the undersigned ALJ issued Decision No. R24-0517-I scheduling a prehearing conference for Monday, August 5, 2024, to discuss the parties’ preferences for a procedural schedule, evidentiary hearing(s), oral argument(s), and/or a briefing schedule.

## **II. PREHEARING CONFERENCE**

9. The undersigned ALJ held the prehearing conference as scheduled on August 5, 2024.

10. The following individuals appeared at the prehearing conference on behalf of the parties:

Local Governments: Brandon Dittman and Wilson Scarbeary;

Public Service: Emily Giraldo; and

CDOT: Justin Cox, Kathy Young, and Scott Hoftiezer.

11. At the prehearing conference, the parties indicated that they did not wish to set an evidentiary hearing, nor do they wish to prefile testimony. In fact, the parties advised that they do not intend to call any witness and instead requested that the ALJ establish discovery deadlines and a briefing schedule in lieu of an evidentiary hearing.

12. The ALJ finds and concludes that a hearing is unnecessary at this time because the Petition may be resolved solely through the filing of appropriate briefs and without the need for witness testimony. The ALJ maintains the discretion to set a hearing or hearings in the future should circumstances change.

13. This Decision memorializes the issues decided and discussed at the August 5, 2024 prehearing conference.

**A. Discovery Deadlines**

14. The parties discussed and agreed to the following discovery deadlines:

- All requests for discovery must be served within 30 days of the issuance of this setting order Decision;
- Answers to discovery requests are due within ten business days of service of a discovery request;
- Presumptive discovery limits are set by C.R.C.P. 26(b)(2)(B), (D), and (E); and
- The parties agree not to take any depositions, and, as such, the limitations of C.R.C.P. 26(b)(2)(A) are inapplicable.

**B. Briefing Schedules**

15. The ALJ has identified two separate issues relevant to this Proceeding: (1) subject matter jurisdiction over the Proceeding; and (2) the merits of the Petition to determine responsibility for incurring the costs of streetlighting. CDOT requested, and the other parties did not oppose, setting one briefing schedule for the jurisdictional issue raised by CDOT and a separate briefing schedule for the merits issues raised in the Local Governments' Petition.

16. The ALJ finds and concludes that separate briefing schedules for each issue would be more efficient, are necessary to thoroughly flesh out the issues, and would be beneficial to the issuance of a Recommended Decision in this Proceeding.

17. In addition, because of the complexity of the issues involved, the ALJ will waive the prohibition against filing replies and/or reply briefs codified in Rule 1400(e) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1.

**1. Jurisdictional Briefs**

18. By Decision No. C24-0079-I, the Commission rejected CDOT's request to dismiss or limit the Petition or portions thereof. The Commission expressly disagreed with CDOT's contention "that evaluating the questions raised by the Petition will necessarily result in the Commission regulating or governing CDOT."<sup>2</sup>

19. Rather, the Commission directed the ALJ to determine which statutory interpretations are required to clarify Public Service's ability to transfer payment responsibility, and whether it is appropriate for the Commission to opine on such interpretations in the context of this Petition.<sup>3</sup>

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<sup>2</sup> Decision No. C24-0079-I at ¶25.

<sup>3</sup> *Id.*

20. The Commission also rejected Public Service’s request to limit the application of the Petition to the payment responsibility dispute between the Company and the Town of Morrison.<sup>4</sup>

21. In addition, the Commission found that hearing separate controversies, when the municipalities present a collective argument, would be inefficient and present issues of fairness.<sup>5</sup>

22. The parties discussed and agreed to the following briefing schedule regarding CDOT’s jurisdictional issue in this Proceeding:

- CDOT will file its opening brief on the jurisdictional issue within 30 days after issuance of this setting order Decision;
- Any response/answer brief must be filed within 14 days after service of the opening brief; and
- Any reply brief in support of the opening brief must be filed within 14 days after service of the response/answer brief.

23. Public Service also advised that they do not intend to weigh in on this jurisdictional issue.

**2. Merit Briefs**

24. The ALJ finds and concludes that the Petition filed by the Local Governments to commence this Proceeding constitutes the opening brief on the merit issues.

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<sup>4</sup> *Id.* at ¶ 26.

<sup>5</sup> *Id.*

25. The parties discussed and agreed to the following briefing schedule regarding the merit issues in this Proceeding:

- CDOT and Public Service must file any responsive brief to the Petition/opening brief within 45 days of the close of the discovery service period/deadline to propound discovery (i.e. within 75 days of this setting order Decision); and
- Local Governments may file a reply brief in support of their Petition/opening brief within 30 days of service of the response/answer brief.

26. The ALJ finds and concludes that the discovery deadlines and briefing schedules agreed to by the parties during the August 5, 2024 prehearing conference are reasonable and appropriate for the purposes of this Proceeding, as ordered below.

### III. **ORDER**

#### **It is Ordered That:**

1. Consistent with the discussion above, the parties may engage in discovery, file briefs regarding CDOT's jurisdictional issue, and file briefs regarding the merit issues contained in the Local Government's Petition.

2. **Discovery Deadlines.** All discovery requests must be served within 30 days of this Decision. Answers to discovery requests shall be completed within ten business days of the service of the discovery request.

3. The prohibition against filing replies and/or reply briefs codified in Rule 1400(e) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1 is waived.

4. **Jurisdictional Briefing Schedule.** CDOT's opening brief shall be filed within 30 days of this Decision. The Local Governments and Public Service may file a responsive brief

within 14 days after service of the opening brief. CDOT may file a reply brief within 14 days of service of any responsive brief.

5. **Merit Issue Briefing Schedule.** CDOT and Public Service shall file responsive briefs to the Local Governments' Petition/opening brief within 45 days after the deadline to propound discovery (75 days from the date of this Decision). The Local Governments shall file a reply brief within 30 days from service of CDOT and Public Service's responsive briefs.

6. An evidentiary hearing will not be scheduled in this Proceeding at this time.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ALENKA HAN

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,  
Director