

Decision No. R24-0690-I

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

PROCEEDING NO. 24AL-0307E

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IN THE MATTER OF ADVICE LETTER NO. 1954 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO IMPLEMENT THE CLEAN ENERGY PLAN REVENUE ("CEPR") RATE ADJUSTMENT MECHANISM TO INCREASE CHARGES FOR ELECTRIC SERVICE, TO BECOME EFFECTIVE JANUARY 1, 2025.

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**INTERIM DECISION  
GRANTING INTERVENTIONS; EXTENDING THE TIME  
FOR A COMMISSION DECISION; ADOPTING  
PROCEDURAL SCHEDULE AND GRANTING MOTION  
FOR EXTRAORDINARY PROTECTION**

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Issued Date: September 26, 2024

**I. STATEMENT**

1. On July 11, 2024, Public Service Company of Colorado ("Public Service" or the "Company") filed Advice Letter No. 1954 - Electric ("AL 1954") with tariff sheets to implement a rate adjustment mechanism called the Clean Energy Plan Revenue ("CEPR"). The CEPR is intended to recover certain costs incurred through the implementation of Public Service's Clean Energy Plan ("CEP") approved, with modifications, in Proceeding No. 21A-0141E ("ERP/CEP Proceeding").

2. On July 23, 2024, Public Service filed a Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information ("Motion for Extraordinary Protection") The filing was related to its AL 1954 filing on July 23, 2024.

3. On August 5, 2024, by Decision No. C24-0564, the effective date of the tariff was suspended, an intervention period was set, and the matter was referred to an Administrative Law Judge (“ALJ”).

4. On September 5, 2024, Trial Staff of the Public Utility Commission (“Staff”) filed its Notice of Intervention as of Right, Entry of Appearance and Notice Pursuant to rule 1007(a) and Rule 1401, and Request for Hearing.

5. On September 6, 2024, the Colorado Energy Consumers (“CEC”) filed their Motion to Permissively Intervene. CEC is an unincorporated association of corporate entities duly authorized and in good standing to transact business within Colorado. All of CEC’s members operate facilities within Public Service’s service territory and purchase electricity and related energy services from the Company.

6. On September 6, 2024, the Utility Consumer Advocate (“UCA”) filed its Notice of Intervention as a Matter of Right, request for hearing and Entry of Appearance. UCA listed several issues that they believe require review.

7. On September 6, 2024, Climax Molybdenum Company (“Climax”) filed their Motion to Intervene Permissively.

8. On August 23, 2024, by Decision No. R24-0615-I, a prehearing conference was scheduled for September 20, 2024.

9. On September 13, 2024, Public Service filed its Motion to Approve Procedural Schedule (“Motion”).

## II. PARTIES TO THE PROCEEDING

### A. Interventions of Right

10. Staff UCA filed timely notices of intervention by. In their filings, they outline several issues they plan to address in this Proceeding and request a hearing.

11. 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. The notices of intervention of right are acknowledged. Staff, CEC, Climax and UCA are parties to this Proceeding.

### B. Permissive Interventions

12. The following entities filed timely requests for permissive intervention: CEC and Climax.

13. CEC states it has a direct, tangible, and pecuniary interest in this proceeding that justifies CEC's participation as a permissive intervenor under Rule 1401(c). If approved, the 1.25 percent CEPR will have a direct and substantial impact on CEC members' electric rates. CEC members have a vested interest in ensuring that Public Service's proposed CEPR rate and methodology for defining and assigning costs related to its CEP, including how the Company assigns costs between the CEPR and the Renewable Energy Standard Adjustment ("RESA"), are consistent with Colorado statute and prior Commission decisions and are transparent, auditable, just, and reasonable.

14. Climax states the issues in this proceeding will impact Climax's electricity costs. These costs will directly and substantially affect the reliability of Climax's electricity service that is necessary for mining and milling molybdenum. As a result, the decision will substantially affect Climax's tangible, and pecuniary interests as contemplated by 4 CCR 723-1-1401(c).

15. 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 with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).

16. In addition, per Rule 1401(e), 4 Code of Colorado Regulations (CCR) 723-1 of the Commission's Rules of Practice and Procedure, Staff may intervene of right in any Commission proceeding. Any other person or entity wishing to intervene of right must identify the basis for the legally protected right that may be affected by the proceeding.

17. As relevant here, to permissively intervene, the party's intervention must:

. . . 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. . . 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. The person or entity seeking to intervene bears the burden of proof that it has met the intervention standards and should be permitted to intervene.

19. If a party does not file a response to a motion within the time prescribed for a response, the Commission may deem that failure as confessing the motion.

20. Public Service has not filed a response or objection to any of the requests to intervene. As such, the ALJ construes the remaining Interventions as unopposed. Based on this, the information provided in their collective requests to intervene, and the relevant legal standards, the ALJ grants the Interventions of CEC and Climax.

**III. TIME TO ISSUE A FINAL COMMISSION DECISION**

21. Under § 40-6-111, C.R.S., when a party files an advice letter, the Commission may suspend the effective date of the tariff for 120 days after the application is deemed complete.

22. On August 5, 2024, by Decision No. C24-0564, the effective date of the tariff was suspended until May 1, 2025. If the Commission finds that additional time is necessary, in which case, this deadline may be extended by an additional 130-days.

23. The ALJ finds that additional time is necessary, and therefore extends the statutory deadline for a final Commission decision by 130 days, as allowed by § 40-6-111(1), C.R.S. The resulting deadline for a final Commission decision to issue is September 8, 2025.

**IV. PROCEDURAL SCHEDULE FOR REMOTE HEARING**

24. In the Motion the Parties propose the following procedural schedule:

Event	Date
Answer Testimony	November 1, 2024
Rebuttal/Cross Answer Testimony	December 6, 2024
Settlement/Settlement Testimony	December 20, 2024
Corrections/Cross Matrix/Exhibit List/ Prehearing Motions	January 2, 2025
Hearing	January 16 & 17, 2025
Statements of Position	February 7, 2025

25. The Parties have also agreed that the discovery procedures contained in Commission Rule 1405 shall govern this proceeding.

26. The Parties request that the hearing be held remotely.

27. The proposed procedural schedule and discovery procedures are acceptable and shall be adopted.

**V. REMOTE EVIDENTIARY HEARING**

28. A hearing in the above captioned proceeding shall be scheduled for January 16 & 17, 2025, at 9:00 a.m. as a remote hearing. At the remote hearing, the parties may call witnesses, present evidence, and make arguments in support of their position. Evidence includes documentary exhibits, testimony, and other tangible items that a party wishes the ALJ to consider in reaching a decision as to the allegations in this case.

29. Attachment A to this Decision provides the information addressing how to use the Zoom platform for remotely participating in the remote hearing. Attachment B outlines procedures and requirements for marking and formatting exhibits to facilitate the efficient and smooth electronic evidence presentations at the remote hearing. It is extremely important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

30. To minimize the potential that the video-conference part of the hearing may be disrupted by non-participants, the link, meeting ID code, and passcode to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

**A. Unified Numbering System for Hearing Exhibits**

31. The Public Utilities Commission Administrative Hearings Section uses box.com to receive and manage exhibits that are first presented in this type of hybrid evidentiary hearing.

32. As such, it is essential that the parties ensure they are able to access and use box.com prior to the evidentiary hearing. To this end, the parties will be provided box.com links

and instructions to: (a) upload exhibits for use during the hearing; and (b) download exhibits once they are presented during the hearing.

33. Each party must (a) pre-mark all hearing exhibits with a hearing exhibit number within their assigned number block before uploading the exhibits to the party's designated box.com folder; (b) sequentially page-number each page of exhibits longer than two pages, with the first page number as page 1, regardless of content, before uploading the exhibits to the party's designated box.com folder; and (c) upload all pre-marked exhibits into each party's respective designated box.com folder prior to the presenting them during the hearing.

34. Attachment B outlines procedures and requirements for marking and formatting exhibits aimed at facilitating efficient and smooth electronic evidence presentations at the remote hearing. It is very important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

35. To efficiently organize the numbering and preparation of exhibits for the hearing, the parties shall use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- Public Service is assigned hearing exhibit numbers 100 to 299;
- Staff is assigned hearing exhibit numbers 300 to 399;
- UCA is assigned hearing exhibit numbers 400 to 499;
- CEC is assigned hearing exhibit numbers 500 to 599;
- Climax is assigned hearing exhibit numbers 600 to 699.

## **VI. MOTION FOR EXTRAORDINARY PROTECTION**

36. On July 23, 2024, Public Service filed a Motion for Extraordinary Protection.

37. On August 5, 2024, by Decision No. C24-0564, the Commission ordered responses to the Motion for Extraordinary Protection be filed no later than September 6, 2024.

38. No party filed an objection to the Motion for Extraordinary Protection.

39. The Company seeks extraordinary protection for various documents and categories of information described herein, collectively referred to as the “Highly Confidential Information.” Some Highly Confidential Information is being provided with the Company’s Direct Case, and the Company anticipates additional Highly Confidential Information may be included in workpapers or could be sought through discovery in this proceeding.

40. Public Service requests extraordinary protection for competitively sensitive information associated with the 2021 ERP & CEP and the CEPR (referred to as the “Highly Confidential Information”), including the following categories of information, and for the following reasons:

1. Executed commercial contracts and project agreements the Company entered into with development partners and/or vendors to support implementation of the 2021 ERP & CEP (“e.g., Purchase Sale Agreement (“PSA”); Balance of Plant (“BOP”); material supply agreements; and service, maintenance, and warranty agreements) and the negotiated terms and conditions contained therein. It would cause all parties to these contracts significant competitive harm if the terms and conditions of these agreements became known to competitors, potential counterparties, or potential future customers for both the Company and these vendors. Importantly, these terms and conditions were negotiated with the expectation of confidentiality. If future potential bidders had access to the highly confidential terms and conditions in these contracts, it would disadvantage the Company's and the counterparties' negotiating position for future deals and it would jeopardize the Company's relationship with these counterparties and vendors, and therefore the Company's ability to obtain favorable contract terms for the Company's customers.

2. Any actual or estimated cost information (“including indicative pricing estimates”) derived from commercial contracts and project agreements that the Company has entered into with development partners and vendors or other information that could be used to derive cost figures in those documents, to the extent incorporated in any other documents, including testimony and attachments submitted with the Advice Letter. It would cause all parties to these contracts significant competitive harm if the terms of these agreements became known to competitors, potential counterparties, or potential future customers for both the Company and

these vendors. Importantly, if future potential bidders had access to the highly confidential pricing information and cost estimates, it would disadvantage the Company's and the counterparties' negotiating position for future deals and it would jeopardize the Company's relationship with these counterparties and vendors, and therefore the Company's ability to obtain favorable prices for the Company's customers.

3. Any actual or estimated cost information associated with land rights for facilities approved in Phase II of the 2021 ERP & CEP. Such information is proprietary and highly sensitive since the Company's land rights acquisition efforts are ongoing. As is the case for the above-referenced pricing information and cost estimates, if prices that have been negotiated or estimates of those costs became public, it would jeopardize the Company's ability to obtain the lowest prices.

4. Any information that is considered highly confidential pursuant to a protective order in Proceeding No. 21A-0141E (the Company's 2021 ERP & CEP proceeding), which is related to this Proceeding. This will ensure that information designated as highly confidential in one proceeding does not and cannot become public in a related proceeding.

5. Any testimony, discovery responses, or documents otherwise filed or served in this Proceeding that contain any of this Highly Confidential Information.

41. Due to the highly sensitive and confidential nature of the Highly Confidential Information, Public Service requests that the Commission afford extraordinary protection for this information by entering an order that it be treated as highly confidential, with access limited as follows:

1. The Commission, its Advisory Staff, Commission Administrative Law Judges, members of Trial Staff, employees of the Colorado Office of the Utility Consumer Advocate ("UCA") assigned to this proceeding, and the Assistant Attorneys General representing the Commission, its Staff and the UCA in this proceeding will have access to the Highly Confidential Information;
2. Intervenors that do not fall into category (c) below would have access to the Highly Confidential Information, restricted, however, to counsel and subject matter experts for such intervenors who provide executed highly confidential non-disclosure agreements in the form provided in Attachment A and Attachment B; and

3. Intervenors that are developers of energy resources, competitive power producers, competitive suppliers or vendors, existing or potential wholesale customers of developers of energy resources, or entities that might otherwise bid into a future Public Service resource solicitation or compete with the suppliers or vendors that are counterparties to these agreements may not have access to the Highly Confidential Information.
42. Rule 1101(b) of the Commission's Rules of Practice and Procedure states:
- b) If a person believes that information requires extraordinary protection beyond that otherwise provided for information furnished subject to a claim of confidentiality, then the person must file a motion requesting highly confidential protection. The motion:
    - (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
    - (II) shall state the specific relief requested and the grounds for seeking the relief;
    - (III) shall advise all other parties of the request and the subject matter of the information at issue;
    - (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;
    - (V) shall be accompanied by a specific form of nondisclosure agreement requested;
    - (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
    - (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.<sup>1</sup>
43. The ALJ finds and concludes that the Motion and Affidavit meet the requirements of Rule 1101(b) of the Commission's Rules of Practice and Procedure, and establish that the information for which the Company seeks extraordinary protection is highly confidential.

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<sup>1</sup> Rule 1101(b), 4 CCR 723-1.

Based upon this finding and the Motion being unopposed, the ALJ will grant the Motion, as ordered below.

**VII. ORDER**

**It is Ordered That:**

1. Consistent with the above discussion, the deadline for a final Commission decision to issue in this Proceeding is extended by 130 days to September 8, 2025, per § 40-6-111, C.R.S.

2. The Colorado Public Utilities Commission Trial Staff (“Staff”), and the Colorado Office of the Utility Consumer Advocate (“UCA”) are acknowledged as parties as of right in this Proceeding. Consistent with the above discussion, the Motions seeking to permissively intervene filed by Colorado Energy Consumers and Climax Molybdenum Company are granted.

3. The procedural schedule as stated in the Unopposed Motion and contained above is adopted.

4. The prehearing conference scheduled for September 20, 2024, is vacated.

5. A remote hearing is scheduled as follows:

DATE: January 16 & 17, 2025

TIME: 9:00 a.m.

PLACE: By video conference: using the Zoom web conferencing platform at a link be provided to the participants by email.

6. The parties and witnesses may not distribute the Zoom link and access code to anyone not participating in the remote hearing.

7. All participants in the hearing must comply with the requirements in Attachments A and B to this Decision, which are incorporated herein and, in the discussion above.

8. All evidence must be presented electronically. Each party is responsible for ensuring that they and their respective witnesses: (a) have access to all pre-filed exhibits; and (b) can download and view documents available from box.com during the hearing.

9. Consistent with the above discussion, the Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information, filed by Public Service Company of Colorado on July 23, 2024, is granted.

10. The Parties shall be held to the advisements in this Decision.

11. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ROBERT I. GARVEY

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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