

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0306E

IN THE MATTER OF MODIFICATIONS TO THE COMMISSION'S ELECTRIC RULES TO ADDRESS THE IDENTIFICATION AND PROTECTION OF SITES OF HISTORIC AND CULTURAL SIGNIFICANCE TO FEDERALLY RECOGNIZED TRIBAL NATIONS.

**INTERIM DECISION
TAKING ADMINISTRATIVE NOTICE OF TRIBAL
CONSULTATION POLICIES AND PROCEDURES**

Issued Date: March 6, 2025

I. STATEMENT, SUMMARY, AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision takes administrative notice of materials referenced in filings in this Proceeding relating to state and federal entities' policies, practices, procedures or guidelines for consulting and working with Tribal governments (collectively, "Tribal Consultation Policies").

B. Procedural History¹

2. On July 11, 2024, the Colorado Public Utilities Commission ("Commission") initiated this matter to amend its Rules Regulating Electric Utilities, 3 *Code of Colorado Regulations* ("CCR") 723-3 ("Electric Rules") to clarify requirements relating to utility infrastructure projects' impacts on historic and cultural significant sites and Tribal governments,²

¹ Only the procedural history necessary to understand this Decision is included.

² This Decision uses the terms "Tribal governments" to refer to Tribal nations and governments.

among other matters.³ At the same time, the Commission scheduled a public comment hearing for August 27, 2024, at 11:00 a.m., and referred this matter to an Administrative Law Judge (“ALJ”).⁴

3. Throughout this Proceeding, members of the public have submitted public comments (both in writing and during public comment hearings).

4. To date, three public comment hearings have been held, the last being on December 16, 2024.⁵ At the December 16, 2024, public comment hearing, the ALJ continued the hearing to March 25, 2025, at 11:00 a.m.⁶ During the hearing, the ALJ explained that she may take administrative notice of materials referenced in filings and may identify additional issues for public comment.⁷

II. FINDINGS AND CONCLUSIONS

A. Administrative Notice

5. Commenters have provided links or brief descriptions of Tribal consultation policies relevant to the proposed Rules, including policies speaking to the appropriate interactions between Tribal governments and governmental entities.⁸ In addition, the Commission’s Notice of Proposed Rulemaking (“NOPR”) discusses the Colorado Commission of Indian Affairs’ (“CCIA”) role as the official government-to-government liaison between the State of Colorado and Tribal governments, including CCIA’s role in facilitating communications between the state and Tribal

³ Decision No. C24-0494 at 1 (issued July 11, 2024).

⁴ *Id.* at 24-25. *See* Attachments A and B to Decision No. C24-0494.

⁵ *See* Decision Nos. R24-0631-I (issued September 4, 2024); Decision No. R24-0821-I (issued November 13, 2024); Decision No. R24-0923-I (issued December 17, 2024).

⁶ Decision No. R24-0923-I.

⁷ *Id.* at 2. The ALJ also noted that she would issue a decision in January 2025 if this were to happen. Due to circumstances outside the ALJ’s control, this was not possible.

⁸ *See e.g.*, Response Comments of the Ute Mountain Ute Tribe filed August 23, 2024, at 4, fn. 8.

governments, and guidance that CCIA provides to state agencies on appropriate consultation with Tribal governments.⁹

6. The ALJ finds that including these documents directly in the record will assist the ALJ in assessing the many issues in this Proceeding. As a result, the ALJ finds good cause to take administrative notice of the Tribal consultation policies, as set forth below. These documents will be added to the record as Attachments A to E to this Decision. Anyone wishing to provide written comment on these documents may do consistent with the below discussion, by April 8, 2025, or may provide verbal comment during the upcoming March 25, 2025 public comment hearing.¹⁰

7. For the reasons discussed, the ALJ takes administrative notice of:

- Federal Energy Regulatory Commission’s (“FERC”) “Policy Statement on Consultation with Indian Tribes in Commission Proceedings” (2003), filed as Attachment A.
- FERC’s “Revision to Policy Statement in Consultation with Indian Tribes in Commission Proceedings” (2019), filed as Attachment B.
- “Tribal Participation Guide for FERC Environmental Reviews,” filed as Attachment C.
- Minnesota Public Utilities Commission’s “Tribal Engagement/Consultation Policy,” filed as Attachment D.
- CCIA’s “State-Tribal Consultation Guide: An Introduction for Colorado State Agencies to Conducting Formal Consultations with Federally Recognized American Indian Tribes,” (2014), filed as Attachment E.¹¹

⁹ Decision No. C24-0494 at 5.

¹⁰ Decision No. R24-0923-I determined that the record would be held open until April 8, 2025, to receive additional comments after the March 2025 public comment hearing. Decision No. R24-0923-I at 6. As such, the above deadline aligns with this timeframe. Although the ALJ planned to issue this Decision with ample time before the next public comment hearing so that interested persons could file responsive comments before the hearing, due to circumstances outside the ALJ’s control, this was not possible. In any event, given that the ALJ is only taking administrative notice of documents and is not identifying specific issues for comment, it is not critical to receive comments on the noticed documents before the hearing. Of course, should participants wish to do so, they may.

¹¹ Several of these documents are available at the following links: <https://mn.gov/puc/about-us/tribal-relations/>; <https://www.ferc.gov/tribalrelations/NEPA>; <https://drive.google.com/file/d/1i5swh33TPGx-rqGbejKGeqPhh3U7G7Nc/view>.

B. Methods to Submit Public Comment

8. Interested persons wishing to provide public comment on the administratively noticed documents may submit written comments by (a) mailing comments to the Commission at 1560 Broadway, Suite 250, Denver, Colorado 80202; (b) electronically filing comments through the Commission's Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this Proceeding; (c) using the "FILE A COMMENT OR COMPLAINT" option on Commission's website at <https://puc.colorado.gov/>; or (d) emailing the Commission at dora_puc_website@state.co.us. All comments must include a reference to this Proceeding number (No. 24R-0306E). Failure to do so may result in written comments not being placed in the record.

9. Interested persons may also submit verbal comments via a voice mail message at (303) 869-3490 or during the scheduled public comment hearing. Those leaving voice mail public comments must state and spell their name and include this Proceeding number (No. 24R-0306E) in their message. Voice mail messages will be transcribed and placed in the record of this Proceeding. Failure to the Proceeding number in voice mail public comments may result in the voice mail comments not being placed in the record in this Proceeding.

10. Although the Commission prefers written comments over verbal comments, it equally considers public comments, regardless of the format in which they are submitted.

III. ORDER**A. It Is Ordered That:**

1. The Administrative Law Judge ("ALJ") takes administrative notice of the documents identified in ¶ 7 above, which are attached to this Decision as Attachments A to E.

2. Anyone wishing to provide public comment on the administratively noticed documents may do so by following the instructions provided in this Decision. Written comments must be submitted by April 8, 2025.

3. 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