Decision No. R25-0702

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25F-0335EG

NEVILLE RUSTOMJEE,

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

RECOMMENDED DECISION
GRANTING MOTION TO DISMISS WITH PREJUDICE

Issued Date: September 30, 2025

I. STATEMENT

1. On August 11, 2025, Neville Rustomjee filed a Complaint against Public Service Company of Colorado, ("Respondent" or "Public Service"). That filing commenced this proceeding.

2. On August 13, 2025, Public Utilities Commission Staff served a copy of the Complaint, together with an order requiring the Respondent to satisfy or answer said complaint within 20 days, in accordance with § 40-6-108, C.R.S. An evidentiary hearing was scheduled for October 27, 2025.

3. On August 27, 2025, the above captioned proceeding was referred by minute entry to an Administrative Law Judge ("ALJ").

4. On August 27, 2025, Public Service filed its Motion to Dismiss Formal Complaint with Prejudice.

II. MOTION TO DISMISS

5. Public Service argues the Complaint must be dismissed because it does not contain sufficient factual allegations (accepted as true) to support any plausible claim for relief.

6. Public Service states that the Complaint does not allege any act or omission on Public Service's part that would violate any provision of law or any order or rule of the Commission.

7. Public Service requests the Complaint be dismissed with prejudice.

III. RESPONSE

8. The Complainant has failed to file a Response to the Motion to Dismiss.

9. The Complainant has not requested additional time to file a Response to the Motion to Dismiss.

IV. APPLICABLE LAW

10. Complaint may be made by the commission on its own motion or by any corporation, person, chamber of commerce, or board of trade, or by any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or by any body politic or municipal corporation by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public utility, including any rule, regulation, or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in

violation, of any provision of law or of any order or rule of the commission. § 40-6-108(1)(a), C.R.S.

11. Except for motions filed in an accelerated complaint proceeding and motions for permissive intervention, the responding party shall have 14 days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1.

12. The Commission may deem a failure to file a response as a confession of the motion. Rule 1400(d) CCR 723-1.

13. The purpose of a motion to dismiss for failure to state a claim is to "test the formal sufficiency of the complaint." *Dorman v. Petrol Aspen, Inc.,* 914 P.2d 909, 911 (Colo.1996). In reviewing a motion to dismiss, the court must take the allegations in the complaint as true and view them in the light most favorable to the plaintiff. *Fluid Tech., Inc. v. CVJ Axles, Inc.,* 964 P.2d 614, 616 (Colo.App.1998).

V. DISCUSSION

14. The Complainant has failed to file a response to the Motion to Dismiss as of the date of this Decision. A failure to respond to a motion can be deemed a confession of the motion and that is sufficient grounds to dismiss the Complaint.

15. Public Service requests that the Complaint be dismissed with prejudice due to the failure to state a claim that relief could be granted.

16. The Complainant is requesting that the Mr. Kenny, the President of Public Service, and Public Utilities Commission Chairman Blank answer questions which were sent to each of them. The questions are of a general nature and do not contain any billing disputes. Most of the

questions concern the justification of general charges that were approved in prior Commission proceedings.

17. The ALJ does not have the ability to force Mr. Kenny or Chairman Blank to answer questions in a letter. In addition, any questioning of prior approved charges would be a collateral attack on a prior Commission decision. Section 40-6-112(2), C.R.S., provides: "In all collateral actions or proceedings, the decisions of the [C]ommission which have become final shall be conclusive[1]."

18. The Complaint shall be dismissed with prejudice.

VI. ORDER

It is Ordered That:

1. The Motion to Dismiss Formal Complaint with Prejudice filed by Public Service Company of Colorado, on August 27, 2025, is granted.

2. The Formal Complaint filed by Neville Rustomjee on August 11, 2025, is dismissed with prejudice.

3. The evidentiary hearing scheduled for October 27, 2025, is vacated.

4. Proceeding 25F-0335EG is now closed.

5. 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.

6. 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. 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

[1] § 40-6-112(2), C.R.S.; see also Lake Durango Water Co. v. PUC, 67 P.3d 12, 22 (Colo. 2003).

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.

7. 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 portions of the transcript according to the procedure stated in § 40-6-113, C.R.S.

8. 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. 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director