

Decision No. C04-0076

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03M-517E

IN THE MATTER OF ADVICE NO. 1404-ELECTRIC FILED BY PUBLIC SERVICE
COMPANY OF COLORADO WITH RESPECT TO REVISION OF ITS AIR QUALITY
IMPROVEMENT RIDERS.

**DECISION GRANTING MOTION FOR
INTERVENTION AND APPLICATION FOR
REHEARING, REARGUMENT, OR RECONSIDERATION**

Mailed Date: January 20, 2004

Adopted Date: January 7, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Application for Rehearing, Reargument, or Reconsideration (RRR) by the Colorado Office of Consumer Counsel (OCC). The Application for RRR objects to certain provisions set forth in Decision No. C03-1386 (issued on December 12, 2003), specifically those provisions which approve the manner of giving public notice of future rate filings by Public Service Company of Colorado (Public Service). Now being duly advised in the premises, we grant the Application for RRR.

B. Discussion

2. This docket concerns Public Service's request for alternative notice of the rate changes proposed in its Advice Letter No. 1404-Electric and the notice to be required for future similar filings. Advice Letter No. 1404 updates Public Service's Air Quality Improvement Rider (AQIR) pursuant to Decision Nos. R99-678 and C02-1422. In accordance with those decisions, Public Service will file future annual updates to the AQIR. In the application in the present

docket, Public Service proposed that it give public notice of the currently proposed rider (in Advice Letter No. 1404) by publishing notice in a newspaper of general circulation, and sending a copy of the filing to parties who signed the stipulations approved in Decision Nos. R99-678 and C02-1422. In addition, the application proposes that these notice provisions apply to future filings to update the AQIR. We granted these requests in Decision No. C03-1386, and the OCC requests reconsideration of our decision only as it applies to future updates to the AQIR.

3. Initially, we address the OCC's Notice of Intervention of Right and Entry of Appearance. We note that much of the discussion in the Notice of Intervention regarding the Commission's failure to file the application procedures set forth in Rule 70, Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, is misplaced. Although the Public Service pleading in this docket was denominated an *application* for alternative notice, in fact, that filing was not an application subject to Rule 70. Applications for alternative notice under § 40-3-104(c)(I), C.R.S., are ancillary to utility proposals to change tariffs--no hearings are required on proposed tariff changes unless suspended by the Commission--and such requests are strictly addressed to the discretion of the Commission. So, for example, no hearings will be held on such requests and no notice, such as those provisions specified in Rule 70, is required. Another indication that the provisions of Rule 70 do not apply to applications for alternative notice is that it would be impossible to comply with the time frames stated in Rule 70 and still consider a request for alternative notice in a timely manner.¹

¹ For example, the normal Advice Letter process under § 40-3-104, C.R.S., requires 30 days' notice to the Commission and the public of proposed changes to tariffs. However, the procedures identified in Rule 70 entail 30 days' notice of an application, possible hearings, formal decisions by the Commission based upon the hearings, Applications for RRR, etc. In short, the time frames entailed for formal applications under Rule 70 are inconsistent with requests for alternative notice under § 40-3-104(1)(c)(I), C.R.S.

4. We understand the point of the discussion in the OCC's Notice of Intervention to be that its intervention in this matter was timely. We agree that the OCC did attempt to intervene in this docket and presented its request for reconsideration in a timely manner. Because there are no explicit provisions for intervention in this docket, we construe the Notice of Intervention as a motion for intervention and grant it.

5. In its Application for RRR, the OCC objects only to that portion of Decision No. C03-1386 that approves the method of notice for future changes to the AQIR. That is, the OCC does not object to the alternative notice approved for Advice Letter No. 1404 specifically. The OCC argues that the alternative notice approved in the Decision will likely not result in actual notice to the general public of proposed rate changes to the AQIR. In addition, the OCC states that it intends to raise the issue of public notice of tariff changes such as the AQIR updates in the upcoming proposed rulemaking proceedings before the Commission. The OCC suggests that the rulemaking proceedings are the proper forum to address the appropriate public notice of ongoing rate adjustments such as the AQIR.

6. We agree with the OCC that the issue of notice of future AQIR and similar filings is more properly addressed in the pending rulemaking proceedings. Therefore, we grant the Application for RRR.

7. We note that one of the reasons for Public Service's application in this docket was its desire to obtain Commission guidance on the preferred method for noticing future AQIR filings. That guidance may be forthcoming in the pending rulemaking proceedings. Alternatively, we advise Public Service to follow those procedures for notice contained in § 40-3-104, C.R.S. Specifically, Public Service should: (1) follow the customary procedure for

giving notice of 30-day Advice Letters (§ 40-3-104(1), C.R.S.); (2) file an application for less-than-statutory notice (§ 40-3-104(2), C.R.S.); or (3) file an application for alternative notice (§ 40-3-104(1)(c)(I)(D), C.R.S.).

II. ORDER

A. The Commission Orders That:

1. The request for intervention by the Colorado Office of Consumer Counsel is granted.
2. The Application for Rehearing, Reargument, or Reconsideration by the Colorado Office of Consumer Counsel is granted consistent with the above discussion.
3. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING January 7, 2004.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

