

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-399E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING EXPENSES INCURRED FOR THE PERIOD JANUARY 2003 THROUGH DECEMBER 2003 THAT ARE RECOVERED THROUGH THE INTERIM ADJUSTMENT CLAUSE AND APPROVING THE CALCULATION OF 2003 SHORT TERM SALES MARGINS.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
VACATING PROCEDURAL SCHEDULE;
SETTING PREHEARING CONFERENCE;
EXTENDING DATE FOR COMMISSION DECISION;
STATING ISSUES FOR DISCUSSION; AND
GRANTING PETITION TO INTERVENE,
SUBJECT TO CONDITIONS**

Mailed Date: September 28, 2004

I. STATEMENT

1. On August 2, 2004, Public Service Company of Colorado (PSCo or Applicant), filed an Application in which it seeks a Commission order approving expenses that were incurred in calendar year 2003 and are recovered through the Interim Adjustment Clause and a Commission order approving the calculation of 2003 short term sales margins (Application). When it filed the Application, PSCo filed the direct testimony and exhibits of Messrs. Wolaver, Uebelhoer, and Anderson.¹ The Application commenced this docket.

¹ The three exhibits appended to Mr. Uebelhoer's direct testimony were filed under seal with the Commission.

2. On August 4, 2004, the Commission gave public notice of the Application. *See* Notice of Application Filed (Notice), dated August 4, 2004. In that Notice, the Commission established a 30-day intervention period and a procedural schedule in this proceeding. This Order will vacate that procedural schedule.

3. On August 16, 2004, Holy Cross Energy (HCE) filed a Petition for Leave to Intervene (Petition). On that same date HCE and PSCo filed a Stipulation under the terms of which PSCo does not object to the granting of the Petition so long as HCE remains on the service list but is not an active participant in this proceeding. No other party filed a response to the Petition.

4. The undersigned Administrative Law Judge (ALJ) finds that the Petition, as limited by the Stipulation, states good cause and that no party will be prejudiced by granting the Petition, subject to the conditions contained in the Stipulation. The Petition should be, and will be, granted subject to the following conditions: HCE will be served with all publicly-available filings and orders in this docket, but HCE will not be an active participant in this proceeding.

5. On September 2, 2004, the Colorado Office of Consumer Counsel (OCC) intervened in this proceeding of right and requested a hearing.

6. On September 14, 2004, Staff of the Commission (Staff) filed its intervention of right and request for hearing.

7. OCC and Staff (collectively, Intervenors) and Applicant are the only parties in this proceeding.

8. On September 14, 2004, the Commission deemed the Application complete as of September 20, 2004.

9. It is necessary to schedule a hearing and to establish a procedural schedule in this matter. To do so, a prehearing conference will be held on October 20, 2004. The provisions of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-79(b)(3) and Rule 4 CCR 723-1-79(b)(4) govern this prehearing conference.

10. The parties should be prepared to discuss the following matters at the prehearing conference: (a) date by which Intervenors will file their answer testimony and exhibits; (b) date by which Applicant will file its rebuttal testimony and exhibits; (c) date by which Intervenors will file their cross-answer testimony and exhibits;² (d) date by which each party will file its corrected testimony and exhibits; (e) date by which each party will file its prehearing motions;³ (f) whether a final prehearing conference is necessary and, if it is, the date for that prehearing conference; (g) date by which the parties will file any stipulation reached;⁴ (h) hearing date(s); and (i) date by which the parties will file post-hearing statements of position and whether responses should be permitted. In addition, the parties should be prepared to discuss any matters pertaining to discovery if the procedures of Rule 4 CCR 723-1-77 are not sufficient. Further, the parties should review, and be prepared to discuss to the extent relevant, the matters contained in Rule 4 CCR 723-1-79(b)(5). Finally, any party may raise any additional issue.

11. In considering proposed dates, parties should keep in mind that the Commission has deemed the Application complete as of September 20, 2004. Absent Applicant's waiver of the statutory time frame or a finding of extraordinary circumstances, a Commission decision in

² Cross-answer testimony and exhibits may address *only* the answer testimony and exhibits of another intervenor.

³ This date should be at least 10 days before the final prehearing conference or, if there is no final prehearing conference, 14 days before the hearing.

⁴ This date should be at least seven calendar days before the first day of hearing.

this proceeding should issue within 210 days of that date (*i.e.*, on or before April 18, 2005).⁵ See §§ 40-6-109.5(1) and 40-6-109.5(4), C.R.S. Any procedural schedule must take into consideration, and must allow time for, preparation of a recommended decision, preparation of exceptions to the recommended decision and response to exceptions, and preparation of a Commission decision on exceptions,⁶ all of which should occur by April 18, 2005.

12. The ALJ expects the parties to come to the prehearing conference with proposed dates for all deadlines. In addition, the parties must consult prior to the prehearing conference with respect to the listed matters. Finally, the parties are encouraged to present, if possible, a procedural schedule and hearing date(s) which are satisfactory to all parties.

13. If the parties are able to reach agreement on a procedural schedule in advance of the prehearing conference date and if there are no issues which require discussion at a prehearing conference, the parties may file a proposed procedural schedule in advance of the prehearing conference⁷ and request that the prehearing conference be vacated. Such a request would need to be filed on or before October 15, 2004.

II. ORDER

A. It Is Ordered That:

1. The procedural schedule established in the Notice of Application Filed, dated August 4, 2004, is vacated.

⁵ By this Order the ALJ finds, due to the nature of the factual and legal issues presented in this proceeding, that 120 days does not provide sufficient time for a Commission decision to be rendered in this matter and that additional time is required. The ALJ, therefore, will extend the time for Commission decision an additional 90 days. See § 40-6-109.5(1), C.R.S.

⁶ As a general rule and not including the time necessary for preparation of a transcript if one is ordered, these activities consume 10 to 12 weeks from the end of the hearing, the filing of statements of position, or the filing of responses to statements of position, whichever occurs last.

⁷ If the parties elect to follow this course, the ALJ requests that the parties contact her (telephone: 303.894.2842) to discuss available hearing dates before filing the proposed procedural schedule.

2. The time for Commission decision in this matter is extended to and including April 18, 2005.

3. The Petition for Leave to Intervene filed by Holy Cross Energy is granted, subject to the conditions contained in the Stipulation filed August 16, 2004, and as stated above.

4. A prehearing conference in this docket is scheduled as follows:

DATE: October 20, 2004

TIME: 10:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

5. The parties must be prepared to discuss the matters set forth above.

6. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge