

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19AL-0268E

IN THE MATTER OF ADVICE LETTER NO. 1797-ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO RESET THE CURRENTLY EFFECTIVE GENERAL RATE SCHEDULE ADJUSTMENT (“GRSA”) AS APPLIED TO BASE RATES FOR ALL ELECTRIC RATE SCHEDULES AS WELL AS IMPLEMENT A BASE RATE KWH CHARGE, GENERAL RATE SCHEDULE ADJUSTMENT-ENERGY (“GRSA-E”) TO BECOME EFFECTIVE JUNE 20, 2019.

**INTERIM DECISION GRANTING REQUESTS FOR
INTERVENTION; MOTIONS FOR ADMISSION
PRO HAC VICE; MOTION TO APPEAR AT PRE-HEARING
CONFERENCE BY TELEPHONE; MOTION FOR LEAVE
TO REPLY TO RESPONSES; AND MOTION
REQUESTING EXTRAORDINARY PROTECTION OF
HIGHLY CONFIDENTIAL INFORMATION**

Mailed Date: July 23, 2019

Adopted Date: July 10, 2019

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I. BY THE COMMISSION**A. Statement**

1. This Decision grants the interventions of: International Brotherhood of Electrical Workers, Local 111 (IBEW); Sierra Club; Colorado Energy Consumers (CEC); Energy Outreach Colorado (EOC); CF&I Steel, L.P., doing business as Evraz Rocky Mountain Steel and Evraz NA, Inc. (collectively, Evraz); Ms. Leslie Glustrom; Department of Energy (DOE) on behalf of the Federal Executive Agencies (FEA); City and County of Denver, Colorado (Denver or City); Vote Solar; Southwest Energy Efficiency Project (SWEEP); AARP; City of Boulder (Boulder); Walmart, Inc. (Walmart); Climax Molybdenum Company (Climax); and Western Resource Advocates (WRA). The interventions as of right of Commission Trial Staff (Staff); the Office of Consumer Counsel (OCC); and, the Colorado Energy Office (CEO) are noted for the record.

2. In addition, we granted the individual Motions to Appear *Pro Hac Vice*, of Mr. Peter Meier of the DOE filed June 24, 2019, and Mr. John B. Coffman of AARP filed June 28, 2019. Further, we granted the Motion Requesting Extraordinary Protection of Highly Confidential Information filed by Public Service Company of Colorado (Public Service or Company).

B. Background

3. On May 20, 2019, Public Service filed Advice Letter No. 1797 with supporting attachments and pre-filed testimony as a Phase I rate proceeding. The proposed effective date of the tariffs filed with Advice Letter No. 1797 is June 20, 2019.

4. Among other things specified in its Advice Letter No. 1797, Public Service is seeking a total increase in its base rate revenues of approximately \$408 million, or 26.4 percent. However, approximately \$249 million of that amount is the result of transfers from three ongoing riders: (1) approximately \$79 million would move to base rates from the Clean

Air-Clean Jobs (CACJA) Act Rider, which would be eliminated upon certain final reconciliations; (2) approximately \$40 million would move to base rates from the Transmission Cost Adjustment; and approximately \$131 million would be recovered through a General Rate Schedule Adjustment-Energy (GRSA-E) to collect costs associated with the Rush Creek Wind Project that are presently recovered through the Company's Electric Commodity Adjustment (ECA). In addition to the GRSA-E, Public Service would implement a standard General Rate Schedule Adjustment (GRSA) of 13 percent. The proposed net increase in total revenues is about \$158.3 million, or an overall bill impact of 5.7 percent.

5. The proposed rate increase is supported by Public Service's cost of service study that generates a total annual base rate revenue requirement of \$1.95 billion. This amount is based on a proposed return on equity (ROE) of 10.35 percent, a cost of long-term debt of 4.18 percent, and a capital structure composed of 56.46 percent equity and 43.54 percent debt. These financing components combine into an overall weighted average cost of capital of 7.66 percent.

C. Interventions

6. **IBEW** represents employees in regard to their wages, hours, and other terms and conditions of employment as set forth under the National Labor Relations Act. As such, it not only has familiarity with the electrical operations of Public Service Company, but is also intimately familiar with the pension and retiree health benefits of Public Service's employees and retirees.

7. **Sierra Club** seeks leave to intervene to examine several issues, including: the prudence of capital additions, including capital expenses at Comanche Units 1 and 3 and Pawnee; the prudence of dismantling and decommissioning costs; incentive compensation for environmental goals; and the proposal regarding Certified Renewable Percentages and the

handling of Renewable Energy Credits. Sierra Club seeks leave to intervene to protect its members' economic, health, and environmental interests and rights that may be affected by this rate case. Among other things, Sierra Club states that its members who are residential electric customers of Public Service have the right to just and reasonable rates, which will be directly affected by the outcome of this case. For these reasons, Sierra Club contends that its members have direct and tangible interests in this proceeding.

8. CEC According to CEC, Public Service's Advice Letter and tariff revisions, if adopted, will "substantially affect the pecuniary or tangible interests" of CEC's members as contemplated by the Commission's Rule of Practice and Procedure 1401, 4 *Code of Colorado Regulations* (CCR) 723-1. Specifically, CEC argues that its members take electric service from Public Service at the Secondary General, Primary General, and Transmission General rate schedules. Public Service projects that, should its proposed rates be approved, on average these commercial and industrial rate classes will incur net monthly total bill impacts of \$112.27 (5.20 percent), \$1,519.60 (percent), and \$15,314.79 (2.68 percent), respectively. For CEC's members, keeping electric costs reasonable and ensuring the ongoing provision of safe and reliable service are critical objectives towards the viability of their respective and collective operations and contributions to Colorado's economy. CEC maintains that their businesses and operation of their facilities cannot flourish otherwise. Therefore, the rate increases proposed in this proceeding will directly impact CEC's members' pecuniary and tangible interests. In addition, given CEC's active participation and influence in several of the predecessor proceedings at issue here, including Commission-approved settlement agreements, CEC states it has a substantial interest in ensuring that the outcome of these proceedings is implemented in accord with the letter and intent of these agreements and the Commission's approvals. According

to CEC, its members have the right to just and reasonable rates and seek intervention in this proceeding to ensure that such right is protected. CEC's members are all large commercial and industrial electric customers with unique service requirements. Even if another large commercial or industrial customer to seek intervention in this proceeding, CEC argues that such party could not adequately represent CEC's interests due to the unique service requirements and characteristics of each CEC member, and of CEC as a group. Therefore, CEC concludes that its interests are not, and cannot, be adequately represented by any other party in this proceeding.

9. **EOC** Its mission is to ensure that low-income Colorado households can meet their home energy needs. Pursuant to § 40-8.5-104, C.R.S., EOC collects and disburses low-income energy assistance funds, as well as voluntary contributions from utility customers pursuant to the Low-Income Energy Assistance Act, § 40-8.7-101, *et seq.*, C.R.S. Funds are disbursed to provide low-income energy assistance and to improve energy efficiency for the benefit of low-income customers. EOC states that it has expertise and a vested interest in assuring that the interests of low-income customers of Colorado utilities are duly recognized in proceedings before the Commission, and in ensuring that rates are just and reasonable such that the organization is not burdened by having to increase assistance payments and other crisis mitigation disbursements. EOC seeks intervention in this proceeding to examine and address the use of the GRSA and the new "GRSA-E", the absence of a Phase II case in the immediate future, the treatment of rate riders, and the cost classification of Advanced Metering Infrastructure meters proposed by the Company, as these issues relate to impacts on low-income customers. EOC has a specific interest in advocating for such low-income customers and ensuring that rates for such customers are just, reasonable, and in the public interest. EOC has a tangible and pecuniary interest in

ensuring that its services are not required for a growing number of Colorado citizens. EOC takes the position that it must ensure that the Company's proposal does not result in rate increases and uncertainty in rates that unjustly, unreasonably, and/or disproportionately burden low-income customers and EOC's services.

10. **Evraz** operates its steel manufacturing and fabrication plant and related facilities in Pueblo, Colorado. Evraz argues that the Public Service rate proposals would affect retail rates substantially and would directly and substantially affect Evraz's electricity costs. Public Service asks for a significant rate increase. As a result, the Company's proposals will likely substantially affect Evraz's tangible and pecuniary interests as contemplated in Rule 1401(c). As a transmission level customer, and the largest customer on the Public Service system, Evraz's unique interests will not be protected unless it is permitted to intervene. The OCC does not represent industrial customers such as Evraz.

11. **FEA** seeks to intervene in this proceeding. The FEA consist of certain federal agencies of the United States Government that have offices, facilities, and installations in the service territory of Public Service and also purchase electric utility service from Public Service. The DOE has been delegated authority by the General Services Administration to represent the consumer interest of the FEA in this proceeding under 40 U.S.C. § 501(c)(2) and § 121(d).

12. Under current rates, the Company's annual base rate costs to DOE's Colorado facilities total over \$1.9 million annually. Current annual base rate costs total in excess of \$7.8 million annually for facilities at the Department of Defense's Buckley Air Force Base. A significant portion of the FEA facilities are served under the Primary General rate schedule. Employing the Company's calculation of the monthly percent change in

annualized rates for Primary General of 4.27 percent, the annual increase in electric costs to the FEA would be in excess of \$400,000. The FEA have a material pecuniary interest in the outcome of this case and a tangible interest in the proper resolution of the issues raised by the Company in its application. In the absence of the FEA's participation in this proceeding, the FEA's interests would not otherwise be adequately represented. The FEA, represented by the U.S. Department of Defense, was an intervenor in the Company's two most recently completed rate cases before the Commission (Proceeding No. 14AL-0974G and consolidated Proceeding No. 14AL-0660E/14A-0680E).

13. **Denver** moves for leave to intervene as a party in this proceeding. Denver is a legally and regularly created, established, organized, and existing home rule city and county, municipal corporation, and political subdivision under the provisions of Article XX of the Constitution of the State of Colorado and the Home Rule Charter of Denver. Denver has a franchise agreement with Public Service relating to the provisioning of electricity within the City and County of Denver. Denver purchases electricity from Public Service, as do its residents and businesses. Denver-owned facilities, including Denver International Airport, municipal buildings, streetlights, and other facilities, used approximately 368 GWh of electricity in 2018. Denver states that in 2018, the municipal buildings accounted for approximately 112 GWh of electricity consumption at a cost of about \$9.5 million. Public Service ratepayers included more than 325 thousand customers in Denver in 2018, consuming more than 6,841 GWh at a cost of \$642.1 million. Additionally, electricity consumption from Public Service's Denver ratepayers accounted for nearly 3.8 million metric tons of CO₂ emissions in 2018. Denver states that it routinely participates in proceedings involving Public Service's investments in electricity generation, transmission, and distribution infrastructure, as well as in proceedings related to the

reduction of greenhouse gases. Denver supports Public Service's effort to develop, own, and operate clean energy resources. The testimony of Jack W. Ihle describes Public Service's request for Commission approval for a proposed Certified Renewable Percentage (CRP) offering, where the Company intends to retire Renewable Energy Certificates (RECs) on behalf of all customers to reflect the level of renewable generation delivered to retail customers. Denver seeks to intervene to explore a number of issues raised in Public Service's application, including but not limited to: (a) the impact of the application on Denver owned facilities and Denver ratepayers; and (b) the CRP proposal and the handling of RECs. Denver reserves the right to raise additional issues as the evidence warrants. If approved, Public Service's application will affect rates and charges imposed by Public Service for electric service. Additionally, Public Service's application effects how Denver can account for and claim the renewable energy delivered from Public Service's system in the City's efforts to satisfy its specific renewable energy goals. These impacts will "substantially affect the pecuniary or tangible interests" of Denver.

14. **Vote Solar** is a national non-profit grassroots organization working to foster economic opportunity, promote energy independence, and fight climate change by making solar a mainstream energy resource across the United States. Vote Solar represents that it has more than 3,000 members in Colorado, including members who are Public Service customers. Vote Solar notes that it is not a trade association and its members are individuals, not corporations. Vote Solar reminds that it intervened in Public Service's most recent Phase II rate case, along with its 2017 Phase I rate case. Proceeding Nos. 16AL-0048E and 17AL-0649E. Vote Solar claims to have a direct and tangible interest in this proceeding. Vote Solar was a party to the previous decoupling proceeding and supports decoupling. In its decision approving decoupling,

the Commission ruled that Public Service would implement the decoupling mechanism after its next Phase I rate case. Public Service, according to Vote Solar, now proposes to indefinitely delay implementing decoupling. Vote Solar plans to recommend that Public Service promptly implement decoupling after this Phase I rate case, consistent with the Commission's prior decision. Vote Solar also plans to review Public Service's distribution system and grid modernization expenses to ensure they are prudent and will fully support distributed energy resources, and it may offer testimony on these issues. Vote Solar argues that the Commission's decision in this proceeding will have a direct and substantial impact on these objectives, as Public Service seeks to recover costs from its customers for smart grid investments and distribution system upgrades that impact solar energy, electric vehicles, and other distributed energy resources. Vote Solar maintains that this proceeding will also substantially and directly affect the interests of its members who reside in Public Service's service territory because the proceeding will directly impact Public Service's rates.

15. **SWEEP** is a regional public interest non-profit organization whose mission is to advance energy efficiency, and the economic and environmental benefits energy efficiency provides. SWEEP was established in 2001 and it works to advance energy efficiency in utility regulatory proceedings and other public policy forums in Colorado. SWEEP states it has actively participated as an intervenor in numerous Commission proceedings in Colorado, including Public Service's rate cases. SWEEP claims to have a direct and tangible interest in this proceeding since it was a party to the previous decoupling proceeding and supports decoupling. SWEEP is concerned that Public Service, now proposes to indefinitely delay implementing decoupling. SWEEP plans to recommend that Public Service promptly implement decoupling after this Phase I rate case, consistent with the Commission's prior decision. SWEEP also plans

to review Public Service's distribution system and grid modernization expenses to ensure they are prudent and will fully support energy efficiency, and it may offer testimony on these issues. For these reasons, according to SWEEP, the Commission's decision on Public Service's 2019 Phase I rate case will have a direct and tangible impact on SWEEP's interest in advancing energy efficiency and energy conservation in Colorado.

16. **AARP** seeks to intervene as a party in this proceeding. AARP has 676,000 members in Colorado, many of whom are residential electric customers of Public Service. AARP's interest in this matter and its grounds for intervention relate to the substantial increases proposed by the Company in its electric rates for its residential customer class, along with other proposed customer service charges. AARP's interest relates to how the Company's rate increase proposal may directly and adversely impact those customers who are aged 50 and over. According to AARP, people aged 50 and over are generally more vulnerable to increases in energy prices. These consumers also devote a higher percentage of their total spending towards residential energy costs than do other age groups. Many older consumers have special needs and safety concerns regarding their access to electric service. AARP's specific interest in this proceeding is not adequately represented by other parties. AARP believes that its intervention and participation in this proceeding would serve the public interest and wishes to become a party to this case for all purposes. Moreover, AARP can assure that its intervention would not unduly delay the proceedings nor prejudice the rights of any other party.

17. **Boulder** petitions for leave to intervene as a party in this proceeding. Boulder is a large customer of Public Service that takes service under several schedules, including Schedule C, Commercial; Schedule SG, Secondary General; Schedule PG, Primary General; Schedule SL, Street Lighting; and Schedule MSL, Metered Street Lighting. Boulder citizens and

businesses are also currently customers of Public Service and take service under various schedules. As such, Boulder claims it has a pecuniary interest in this proceeding. Further, as an entity that takes street light service under Schedule SL, Boulder represents that it has a particular and unique experience with the requests for which Public Service now seeks the Commission's approval. Boulder seeks to intervene with respect to, and potentially may address, a number of issues raised in the Public Service application, including but not necessarily limited to: whether the proposed rate increase will result in rates and charges that are just and reasonable; whether the proposed "capital reach" should be added onto the 2018 historic test year; whether the proposed Certified Renewable Percentage should be approved; whether the CACJ Act rider should be rolled into base rates given the intent of the rider was to provide transparency with regard to the cost of the program; whether a 10.35 percent ROE is necessary for Public Service to receive a fair return on its investment; whether the capital structure proposed by Public Service is equitable; whether it is appropriate to collect certain costs associated with the Rush Creek Wind Project through the proposed GRSA-E; whether the updated timeline for Advanced Grid Intelligence and Security deployment should be approved; whether the proposed treatment of oil and gas royalty revenue and the proposed treatment of land sale proceeds is fair to both Public Service shareholders and Public Service ratepayers; whether the proposed increase in street light maintenance is warranted; whether the details regarding Public Service's wildfire mitigation plans indicate a prudent use of ratepayer funds; whether the proposed changes to the Data Privacy Rules should be approved; and whether this is the appropriate time to terminate the quality of service plan requirement.

18. **Walmart** is a large retailer with 55 stores and related facilities within the service territory of Public Service. These facilities include Walmart Supercenters, Sam's Clubs, and gas

stations. Walmart's corporate headquarters is located in Bentonville, Arkansas. Walmart points out that it is a retail customer of Public Service with a significant percentage of its electrical capacity and energy needed to power its facilities purchased from Public Service. As a large energy user, Walmart argues that the relief requested in the advice letter and accompanying tariffs will likely have a significant impact on Walmart's energy costs. Because energy cost is a large part of Walmart's operating costs, it argues that this proceeding will have an impact on Walmart's operations in Colorado that substantially affects its pecuniary and tangible interests. Walmart states its interests are not adequately represented by any other party to this proceeding because of Walmart's unique status as a large retail electric customer.

19. **Climax** moves to intervene permissively as a party in this proceeding pursuant to Rule 1401(c). Climax operates the Climax and Henderson molybdenum mines and related facilities near Leadville and Empire, Colorado, respectively. Climax receives electric service from Public Service at its respective facilities and is one of Public Service's largest electric customers. Climax argues that the Commission's decision in this case, therefore, will directly and substantially affect Climax's electricity costs and possibly the reliability of Climax's electric service necessary for mining and milling molybdenum. As a result, it will substantially affect Climax's tangible and pecuniary interests as contemplated by Rule 1401(c). Climax maintains that its interests as one of Public Service's largest electric customers will not be adequately represented unless Climax is allowed to intervene. Participation by Climax will not unduly broaden the issues in this proceeding because the matters that Climax may address will pertain to issues raised by Public Service's proposals and that are or may be inherent in this proceeding. Preliminarily, Climax has identified several issues of concern that it may address: (a) the proposed ROE; (b) the proposed capital structure; (c) the proposed "capital reach" of

\$593 million for capital additions by the end of 2019; and (d) the proposed, new GRSA-E in the context of the multiple other riders that customers are required to pay outside the Commission's review of Public Service's overall cost of service.

20. **WRA** is located in Colorado and has members and financial supporters who live in Colorado and are customers of Public Service. WRA notes that it has been involved in proceedings before the Colorado Commission for over 25 years and has been granted intervenor status in matters concerning utility rates, demand-side management, resource planning, financial incentives, rate making, mergers and industry restructuring, voluntary green energy programs and marketing, rulemaking, transmission, plant certification, and plant siting. WRA states that it has provided scientific, technical, economic, and policy testimony in previous Commission proceedings. WRA argues that due to the content of Public Service's Advice Letter and associated testimony, this proceeding will directly impact WRA's substantial, tangible interest in reducing the environmental impact of electricity generation. WRA states that the Commission's decision in this proceeding will directly impact the tangible interests WRA works to protect, including human health, air quality, water quality, and the health and beauty of Colorado's lands and ecosystems. No other party in this proceeding, according to WRA, will adequately represent its interests. WRA states that it is a conservation organization with unique knowledge and experience concerning utility regulation in Colorado. WRA asserts that it works to reduce the detrimental environmental impacts of electricity production, and its interests are separate and distinct from other organizations, governmental entities, or parties representing the commercial or business interests of renewable energy developers.

21. **Leslie Glustrom**, a Public Service ratepayer and shareholder, states that she is "'interested in and will be affected by' the outcome of this docket as required by Colorado

Statutes [*sic*] § 40-6-109(1).” She claims to have a substantial pecuniary interest in this proceeding as called for in Rule 1401 as she is both a Public Service ratepayer and a significant stockholder. Ms. Glustrom claims that when asked, the OCC has declined to collaborate with her in this proceeding, so she respectfully requests that this Petition to Intervene be granted. According to Ms. Glustrom, she has seen her Public Service rates increase significantly over the last 12 years as a result of Public Service rate increases that have occurred starting with the 2006 rate case proceeding (06S-234EG) as well as the increases that resulted from the pass through of fossil fuel and other costs under the ECA and the various GRSAs that have been in effect over this period. In addition, Ms. Glustrom states that she and her husband are significant investors in Public Service stock and so she claims a substantial pecuniary interest in how the decisions made in this proceeding will affect the future health of Public Service. Ms. Glustrom believes that her interests cannot be adequately represented by any other party, including the OCC, because no other party has taken positions that align with hers over the last 15 years. Ms. Glustrom represents that after being asked, the OCC specifically declined to collaborate with her in this proceeding. Ms. Glustrom states she has been significantly involved in many Colorado PUC proceedings related to Public Service from 2012 to the present and has submitted detailed testimony and closing statements in many of these proceedings.

22. In its response to Ms. Lustrum’s claims, OCC wishes to clarify the assertions made by Ms. Glustrom that it declined to collaborate with her. Specifically, OCC states that in an email sent to Ms. Cindy Schonhaut, the Director of OCC, Ms. Glustrom sought the OCC’s “official response on OCC's willingness to collaborate with [her] on filing discovery and preparation of testimony and final positions in the 19AL-0268E docket.” OCC goes on to state that she indicated in her email that she wanted to “include the OCC's official response in her

Petition for Intervention.” In a prior email sent to Ms. Schonhaut on May 29, 2019, OCC maintains Ms. Glustrom stated that she had “a strong interest in Public Service's proposed “regulatory realignment/rate case” and would like to engage, particularly with respect to adding the Rush Creek and CACJA expenditures to base rates. While the OCC knows what Ms. Glustrom seeks to address from her emails, she did not include a copy of the OCC’s official response on its willingness to collaborate with her on filing discovery, preparation of testimony, and final positions in this proceeding in her petition.

23. The OCC points out that the nature of the collaboration she requested of the OCC also was not provided in her petition. In her Petition to Intervene, the OCC states she identifies proceedings in which she has been granted intervention status, but provides no specific interests other than the statement that she has a substantial pecuniary interest in this proceeding as she is both a Public Service ratepayer and a significant stockholder and that she has seen rates increase over the past 12 years, some through fossil fuel increases passed through the ECA. She also references positions she took in Proceeding No. 10M-245E relating to implementation of the CACJA in her petition, but does not elaborate further as she did in her May 29, 2019 email to Ms. Schonhaut. OCC declined to collaborate with Ms. Glustrom under the terms she proposed. OCC is unwilling to collaborate with her on filing discovery, preparation of testimony, and final positions. OCC notes that it has collaborated with Ms. Glustrom repeatedly in the past, beginning in September 2014.

24. Public Service argues that Ms. Glustrom’s Petition to Intervene in this instance falls short of the requirements for permissive intervention under Rule 1401(c). The Commission determined in Decision No. C16-0663-I¹ that the test for adequate representation is whether there

¹ Decision No. C16-0663-I was issued in Proceeding No. 16A-0396E on July 15, 2016.

is an identity of interests, rather than a disagreement over the litigation strategy of the representative. Public Service asserts that Ms. Glustrom's Petition to Intervene is grounded in two concepts: first, her status as a shareholder, which on its own does not establish a tangible and pecuniary interest that is a requisite for a permissive intervention in a Commission proceeding. Second, Public Service avers that Ms. Glustrom details the unique nature of her participation and positions taken, particularly in Proceeding No. 10M-245E, and argues that this participation supports her intervention because it is different than all other intervenors in past Commission proceedings. According to Public Service, this is effectively a disagreement in litigation strategy. A disagreement in litigation strategy in past proceedings, regardless of the relevance of decisions made in the past proceedings to this rate review proceeding, does not establish the lack of an identity of interests or inadequate representation to support a permissive intervention. Accordingly, Ms. Glustrom's arguments about her past participation and attendant positions taken in Commission proceedings do not satisfy the adequate representation test established by the Commission. According to Public Service, Ms. Glustrom's Petition to Intervene addresses potential issues she intends to raise at a very high and non-descript level and does not identify any interests that are demonstrably different or "unique" from issues that will be raised by the OCC.

25. On July 2, 2019, Ms. Glustrom filed a Motion for Leave to Reply and Reply to OCC's and Public Service's responses to her intervention request. In her reply, she represents that the responses of OCC and Public Service contain material misrepresentations of facts and incomplete and incorrect statements of law. According to Ms. Glustrom, in failing to cite to §§ 40-3-101, 40-3-102, and 40-2-123(1)(a), C.R.S., Public Service has presented an incomplete, and therefore, inaccurate view of Colorado law, that fails to paint a full picture of the

long-standing laws designed to protect Public Service's Colorado customers from the Company's monopoly power and to ensure that the PUC has given the fullest possible consideration to clean energy technologies. Ms. Glustrom maintains that neither Public Service nor OCC has acknowledged these laws that should be governing the actions and decisions of the PUC—and which will guide Ms. Glustrom's participation in this proceeding. It is only through being granted an intervention that Ms. Glustrom will be able to fully defend her rights under Colorado law to ensure that rates are just and reasonable, that abuses are corrected and that the fullest possible consideration is given to clean energy technologies—all of which Colorado law requires

26. As for the OCC, she states that the OCC has failed to understand the facts related to other intervenors at the PUC and whether they could adequately represent Ms. Glustrom in this proceeding. While Ms. Glustrom appreciates the hard work of the OCC, she disagrees in the strongest possible terms that other parties in this proceeding can adequately represent her views in this 19AL-0268E proceeding. A careful examination of the many Colorado PUC proceedings that have involved expenditures on coal plants by Public Service in Colorado over the last 15 years will make it clear that the OCC is mistaken.

1. Findings as to Interventions

27. Requests for intervention are subject to the Commission's statute and rules. Specifically, § 40-6-109(1), C.R.S., creates two classes of intervenors who may participate in PUC proceedings: (1) those who may intervene as of right; and (2) those whom the PUC permits to intervene. *See, e.g. Yellow Cab Coop. Ass'n v. Public Utils. Comm'n*, 869 P.2d 545, 550 (Colo. 1994); *Ram Broadcasting of Colorado v. Colo. Pub. Utils. Comm'n*, 702, p.2d 746, 749 (Colo. 1985); *De Lue v. Pub. Utils. Comm'n*, 454 P.2d 939, 941-42 (1969). The "PUC

maintains discretion to grant or deny petitions for permissive intervention.” (*PSCo v. Trigen-Nations Energy Company, L.L.P.*, 982 P.2d 316, 327 (1999)).

28. Commission Rule 4 CCR 723-1-1401(c) provides as follows:

A motion to permissively intervene shall 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. The motion must 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. If a motion to permissively intervene is filed in a natural gas or electric proceeding by a residential consumer, agricultural consumer, or small business consumer, the motion must discuss whether the distinct interest of the consumer is either not adequately represented by the OCC or inconsistent with other classes of consumers represented by the OCC. The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Motions to intervene by permission will not be decided prior to expiration of the notice period.

It is under these standards that motions or petitions for permissive intervention are to be considered.

29. We find good cause to grant the permissive interventions sought in this proceeding. We find that each intervenor has stated good cause under Rule 1401 to be a party to Public Service's rate case and contribute to developing a comprehensive record in this proceeding. Despite the objections of Public Service to Ms. Glustrom's request to intervene, we find that she also states good cause to allow her to intervene. Ms. Glustrom is on notice that she will be held to the same duties and responsibilities as an attorney in this matter.²

² See, *Reliford v. People*, 549, 579 p.2d 1145 (1978) “one who elects to act as his or her own attorney must accept the burdens and hazards that accompany that decision.”

30. Therefore, the intervenors in this proceeding are: Staff, OCC, CEO, IBEW, CEC, EOC, Evraz, Ms. Glustrom, DOE/FEA, Denver, SWEEP, AARP, Boulder, Walmart, Climax, and WRA.

D. Public Service Motion for Extraordinary Protection

31. On May 20, 2019, Public Service filed as part of an “Omnibus Motion,” its request for extraordinary protection of highly confidential information. Consistent with Rule 1101(b), the Company is requesting highly confidential designation for data that does not comport with Commission Rule 3033(b) of the Rules Regulating Electric Utilities 4 CCR 723-3, the “15/15 Rule”. According to Public Service, that Rule provides in part:

At a minimum, a particular aggregation must contain at least fifteen customers; and, within any customer class no single customer’s data or premise associated with a single customer’s customer data may comprise 15 percent or more of the total customer data aggregated per customer class to generate the aggregated data report (the “15/15 Rule”).

32. Public Service provides that Highly Confidential Attachment JEM-2 to the Direct Testimony of Company witness Ms. Jannell E. Marks and her supporting workpapers contain the Company’s monthly 2018 electric sales and customer counts by rate schedule. According to the Company, some of its rate classes have fewer than 15 customers, and other rate classes have 1 or more customers whose load comprises more than 15 percent of the total customer data. In these situations, because the data does not comply with the 15/15 Rule, the Company has taken it upon itself to redact the aggregate rate class information and provided it as highly confidential.

33. Public Service now requests that the Commission grant extraordinary protection to any information produced in this proceeding going forward that does not comport with the 15/15 Rule, including the data contained in Highly Confidential JEM-2 and Ms. Marks’s supporting workpapers. In addition to the protections generally afforded confidential information

as specified in Commission Rule 1101, Public Service asks that the Commission issue an order restricting access to this information only to the Commissioners, the Commission Staff, employees of the OCC assigned to the proceeding, and counsel for Staff and OCC assigned to this proceeding.

34. Public Service claims extraordinary protection is warranted as disclosure would violate the letter and spirit of the Commission's data privacy rules, which were promulgated to protect customers from the unauthorized disclosure of customer-specific information. Additionally, Public Service argues that extraordinary protection for this information is consistent with Commission Rule 1105 (addressing the disclosure of a customers' personal information) and Rule 3027 (governing the disclosure of customer data by a utility).

35. According to the Company, the Commission has consistently granted similar requests in past proceedings. Public Service points to several previous proceedings in which the Commission has granted similar relief. Public Service states that Ms. Marks has filed a public version of the Highly Confidential Attachment JEM-2 and has also prepared public versions of her workpapers. Public Service notes that in both Highly Confidential JEM-2 and the associated workpapers, the Company has only redacted the data sets that violate the 15/15 Rule, leaving all compliant data sets publicly available. Public Service maintains that the information provided in the public versions balances the objective of affording interested parties with access and transparency while protecting highly confidential customer information. Notably, no parties have objected to the request for extraordinary protection.

36. We agree with Public Service that protection of customer data as set forth in Rule 3027 is of the utmost importance. Therefore, we will grant the Company's motion for extraordinary protection for any customer specific information produced in this proceeding going

forward that does not comport with the 15/15 Rule, including the data contained in Highly Confidential JEM-2 and Ms. Marks's supporting workpapers. Access to this information will be restricted to the Commissioners, Commission Advisory Staff, Commission Advisory Attorneys, employees of the OCC assigned to the proceeding, counsel for OCC assigned to this proceeding, as well as Commission Trial Staff and its legal counsel assigned to this proceeding. Public Service shall be responsible for providing Staff and OCC with non-disclosure agreements and ensuring the proper disposal of data subject to this protection at the conclusion of this proceeding.

E. Motions to Appear *Pro Hac Vice*

37. Peter Meier of DOE and John B. Coffman of AARP both filed motions to appear *pro hac vice*. After reviewing the respective motions, it appears that both attorneys are in compliance with Colorado Rule of Civil Procedure 121 § 1-2 and Rules 205.3 and 205.4 for admission *pro hac vice*, and have paid the requisite \$300 fee to the Colorado Supreme Court. Consequently, we find good cause to grant the individual motions of Mr. Meier and Mr. Coffman to appear *pro hac vice*.

F. Motions to Attend Pre-Hearing Conference by Telephone

38. Counsel for Walmart, AARP, and DOE all request to participate in the pre-hearing conference by telephone. We granted those motions and the parties participated in the pre-hearing conference by telephone.

II. ORDER

A. It Is Ordered That:

1. The Petitions or Motions to Intervene filed by the International Brotherhood of Electrical Workers, Local 111; Sierra Club; Colorado Energy Consumers; Energy Outreach

Colorado; CF&I Steel, L.P., doing business as Evraz Rocky Mountain Steel and Evraz NA, Inc.; Ms. Leslie Glustrom; the Department of Energy on behalf of the Federal Executive Agencies; the City and County of Denver, Colorado; Vote Solar; Southwest Energy Efficiency Project; AARP; City of Boulder; Walmart, Inc.; Climax Molybdenum Company; and Western Resource Advocates are granted.

2. The Motion for Leave to Reply and Reply to OCC's and Public Service's Responses to Leslie Glustrom's Intervention Request filed on July 2, 2019 is granted.

3. The Motion of Public Service Company of Colorado for Extraordinary Protection filed on May 20, 2019 is granted consistent with the discussion above.

4. The Motion of Mr. Peter Meier to Appear Pro Hac Vice filed on behalf of the Federal Executive Agencies on June 24, 2019 is granted.

5. The Motion of Mr. John B. Coffman to Appear Pro Hac Vice filed on behalf of AARP on June 28, 2019 is granted.

6. The Motion to Attend the Pre-Hearing Conference by Telephone of Walmart, Inc. is granted.

7. The Motion to Attend the Pre-Hearing Conference by Telephone of AARP is granted.

8. The Motion to Attend the Pre-Hearing Conference by Telephone of the Department of Energy on behalf of the Federal Executive Agencies filed on July 2, 2019 is granted.

9. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 10, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners