

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0204E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS 2021-2023 TRANSPORTATION ELECTRIFICATION
PLAN.

**INTERIM DECISION ADDRESSING INTERVENTIONS;
GRANTING PRO HAC VICE MOTION; AND
SCHEDULING REMOTE PREHEARING CONFERENCE**

Mailed Date: July 10, 2020
Adopted Date: July 8, 2020

I. BY THE COMMISSION

A. Statement

1. Through this Decision, consistent with the discussion below, we grant requests for intervention filed by the Regional Transportation District (RTD); Charge Point, Inc. (Charge Point); Tesla, Inc. (Tesla); Electrify America, LLC (Electrify America); EVgo; Enel X North America, Inc., Greenlots, North America, EVBox, Inc. (jointly, Joint EV Charging Providers); the City of Boulder (Boulder); the City and County of Denver (Denver); Colorado Energy Consumers (CEC); Western Resource Advocates, Sierra Club, and Natural Resource Defense Counsel (jointly, Environmental Organizations); Southwest Energy Efficiency Project (SWEEP); Vote Solar, GRID Alternatives, Inc., Colorado Latino Forum, and GreenLatinos (jointly, Environmental Justice Coalition); and Energy Outreach Colorado (EOC).

2. In addition, we: (1) acknowledge intervenors as of right that are parties to this proceeding include Staff of the Public Utilities Commission (Staff), the Office of Consumer Counsel (OCC), and Colorado Energy Office (CEO); and (2) grant the request for Ryan Long to

appear *pro hac vice* to represent Public Service Company of Colorado (Public Service or the Company) in this matter.

3. We find it appropriate to move forward with this proceeding. Public Service is instructed to confer with the parties to this proceeding and provide a proposed procedural schedule, jointly if possible, no later than July 20, 2020. A remote prehearing conference is scheduled in this matter for July 27, 2020, as discussed below.

B. Procedural Background

4. Senate Bill (SB) 19-077, which was signed into law on May 31, 2019, requires investor owned electric public utilities to file with the Commission by May 15, 2020, “an application for a program for regulated activities to support widespread transportation electrification” within its service territory.¹ SB 19-077 offers a wide variety of regulated activities a utility can undertake to support widespread transportation electrification, including investments or incentives to facilitate charging infrastructure and the electrification of public transit and other vehicle fleets, rate designs or programs to encourage vehicle charging that supports the operation of the electric grid, and customer education to encourage greater adoption of electric vehicles (EVs).² However, the bill further states: “The retail rate impact from the development of electric vehicle infrastructure must not exceed one-half of one percent of the total annual revenue requirements of a utility.”³

5. On May 15, 2020, and as required by SB 19-077, Public Service filed its Application for Approval of its 2021-2023 Transportation Electrification Plan (TEP). Public Service requests the Commission issue an order approving the proposals contained in its 2021-

¹ § 40-5-107(1)(a), C.R.S.

² § 40-5-107(1)(b).

³ § 40-1-103.3(6), C.R.S.

2023 TEP application. Within its filing, Public Service states its TEP is intended to support Colorado's goal of attaining 940,000 EVs on the road by 2030 as well as to help position Colorado as a national leader in vehicle electrification.

6. Concurrent with its Application, Public Service provided its motion requesting Mr. Ryan Long be permitted to appear *pro hac vice* on behalf of the company (Pro Hac Vice Motion).

7. On May 18, 2020, the Commission issued a Notice of Application Filed (Notice). The Notice sets a 30-day intervention period that ran through June 17, 2020.

8. The OCC, the CEO, and Staff each timely filed a notice of interventions of right, and Staff and the OCC request a hearing. In addition, the following timely seek permissive intervention in this proceeding: RTD; Charge Point; Tesla; Electrify America; EVgo; Joint EV Charging Providers (comprised of Enel X North America, Inc., Greenlots, North America, EVBox, Inc.); Boulder; Denver; CEC; the Environmental Organization (comprised of Western Resource Advocates (WRA), Sierra Club, and Natural Resource Defense Counsel (NRDC)); SWEEP; the Environmental Justice Coalition (comprised of Vote Solar, GRID Alternatives, Inc., Colorado Latino Forum, and GreenLatinos); and EOC. No responses to the intervention pleadings were filed.

9. Through Decision No. C20-0465, issued June 24, 2020, the Commission found it appropriate to stagger the Public Service TEP application proceeding with the Black Hills Colorado Electric, LLC (Black Hills), which was also filed pursuant to SB 19-077 in early May of 2020. The utilities were required to confer and provide a preferred procedural proposal such that both applications could be considered *en banc*.

10. As required by the Commission's decision, Black Hills and Public Service provided their respective procedural preferences through a joint filing on June 29, 2020 (Joint Utility Filing). Within the Joint Utility Filing, Black Hills indicates its willingness to waive statutory deadlines

under § 40-6-109.5, C.R.S., and hold its Proceeding No. 20A-0195E in abeyance for a limited period to accommodate a staggered schedule. Public Service responds in the Joint Utility Filing that it prefers to move forward with its TEP application proceeding for a number of policy and practical reasons, including that delay may cause conflict with other Public Service matters likely to be considered *en banc* by the Commission. Public Service expressed an appreciation for Black Hills' flexibility, which allows the Commission to consider both matters *en banc*. Public Service further indicated that it plans to confer with all intervenors prior to a prehearing conference, to determine a mutually acceptable procedural schedule, and would support a potentially belated intervention by Black Hills in the Company's TEP proceeding.

C. Interventions

11. We find it appropriate to address procedural matters, including establishing parties to the proceeding based on the timely filed requests for intervention. Two classes of parties may intervene in proceedings such as this: parties with a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).

12. Commission Rule 1401(c) of the Rules of Practice and Procedure 4 CCR 723-1, requires persons seeking permissive to show the following, in part:

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.

13. Pursuant to Rule 1500, 4 CCR 723-1, the person seeking leave to intervene by permission bears the burden of proof with respect to the relief sought.

14. Staff, CEO and OCC each filed notices of intervention by right and state issues each plans to address based on the initial Public Service TEP filings. No action is necessary on these interventions by right.⁴ Staff, CEO, and OCC are parties to this proceeding.

15. In addition to the three parties that filed intervention as of right, the Commission received 13 timely requests for permissive intervention.

16. Charge Point filed a timely request to intervene on May 27, 2020, and states that it is an electric vehicle charging network that sells smart charging solutions. Within its pleading, Charge Point claims its business would be affected in this proceeding, including that Public Service's proposed incentives, qualification proposals for residential multi-dwelling, and commercial products, fleet advisory and assessment services, and other proposals in the TEP application would directly affect Charge Point's sales, offerings, products, and services.

17. Tesla filed its request for intervention on June 1, 2020, claiming that, as a developer in electric vehicles, charging stations, and clean energy products and services, the application could directly and substantially affect Tesla's business investments in Colorado.

18. Boulder filed its request on June 12, 2020, stating its interests in this matter, including a number of issues in the application that could affect its residents.

19. Electrify America also timely filed its request on June 15, 2020, stating it is a wholly-owned subsidiary of Volkswagen Group of America with investments of \$2 billion over ten years in zero-emissions vehicles infrastructure, education, and awareness. As an operator of an

⁴ See Rule 1401(b), 4 CCR 723-1.

electric vehicle charging network with existing and potential customers in Public Service's territory, Electrify America states it has a direct and substantial interest in the TEP, specifically in that it is developing DCFC stations along the major highway corridors in Colorado. It states that specific terms of Public Service's application will affect its tangible interests.

20. The June 15, 2020 intervention from the Environmental Organizations states that these collective intervenors have been active in transportation electrification policy development in Colorado, including the EV Working group (Proceeding No. 17I-0692E) and informational docket (Proceeding No. 19M-0574E). In this proceeding, the group states their collective interest in air quality and transportation-related emissions, and list specific aspects of Public Service's proposal to address in order to ensure "removing key barriers to EV adoption..." and the groups aim to add information into the record regarding the statutory directives to improve air quality and carbon emission reductions.

21. RTD, a political subdivision authorized under Colorado State statutes to develop, maintain, and operate a mass transportation system in Colorado, states within its pleading that it plans to address issues that could affect its electric bus and support vehicle fleets, in addition to the provision of clean, affordable transportation. Through its June 16, 2020 filing, RTD states it is an intervenor as of right, or in the alternative, requests the Commission grant it permissive intervention.

22. Denver also filed its request to intervene on June 16, 2020. Denver includes its interests in the proceeding and that the plan will affect rates and charges on the citizens it represents.

23. SWEEP also filed its request to intervene on June 16, 2020, and includes that it is a regional nonprofit aimed at addressing energy efficiency and clean transportation. SWEEP

claims its interests in accelerating transportation electrification “and unlock[ing] one of the largest available pools of energy efficiency potential in Colorado’s economy,” in addition to effectuating the statutory requirements it states SWEEP helped pass that required the instant filing.

24. On June 17, 2020, EVgo provided its request for intervention, stating it is an electric vehicle service provider, with 26 fast chargers currently in Public Service’s Colorado territory and that it is expanding its business in the Company’s territory. EVgo represents that its expansion in Colorado is driven by public-private partnerships, including those with the Regional Air Quality Counsel and CEO, in addition to automakers. EVgo also states it is working with Denver on grants awarded by the Department of Energy. In this capacity, and as a commercial customer of Public Service, EVgo states it has a pecuniary and tangible interest in the outcome of the proceeding and lists specific proposed schedules, services, and related filings from the Company that it will examine in the proceeding.

25. The Joint EV Charging Providers filed on June 17, 2020, and together these filers state they represent companies that provide electric vehicle service equipment and software for charging applications, with existing and future business interests in the Colorado market, which they claim will be affected by the application’s outcome.

26. The Environmental Justice Coalition state combined interests representing LatinX throughout Colorado, in addition to organizations dedicated to making renewable energy technology available to underserved communities. Together, these groups claim they have a tangible interest and that minority and low-income groups are disproportionately affected by air pollution emitted from motor vehicles. Also, the filing claims a substantial and tangible interest in ensuring that low-income communities have ready access to EVs, particularly since transportation costs are the second highest expenditure for low-income households. The groups identify specific

examples in the TEP, including effects of locations for charging infrastructures, and ensuring equitably designed rebate programs, among other specific discussion points, which the group states it will address in the proceeding.

27. The CEC, an association of large corporations and entities, states through its filing that its customer's interests will be affected, particularly in ensuring they pay rates that are just and reasonable, not "cross-subsidized," and that funds collected from the various programs at issue are transparent.

28. Finally, on June 17, 2020, EOC filed its request for permissive intervention. EOC states it is a nonprofit that "ensure[s] low-income Colorado households can meet their home energy needs." Under § 40-8.7-101, *et seq.*, EOC collects and distributes low-income energy funds to provide low-income energy assistance and improve energy efficiency for low-income customers. EOC includes in its request that it has an interest in ensuring that the final TEP includes robust opportunities for low-income customers, stating it will address specific rebate and other programs proposed.

29. Each prospective intervenor addresses its claimed interest in the proceeding, citing to a specific matter or matters that it will address based on the initial filing, and a claimed pecuniary or tangible interest in the proceeding's outcome. Particularly given the potential policy implications in this inaugural TEP filing, we find it appropriate to grant each request for permissive intervention in this proceeding.

30. We decline to acknowledge RTD as an intervenor as of right in this proceeding. Unlike CEO, OCC, and Staff, RTD cites no relevant law that provides intervention as of right status in PUC proceedings. Nevertheless, we find RTD meets the standard required in Rule 1401, 4 CCR 723-1, and grant RTD's alternative request for permissive intervention.

31. Further, we note that intervenors in the Environmental Organizations, Joint EV Charging Providers, and the Environmental Justice Coalition identify their shared interests and chose to file jointly where their concerns align. We commend this collaboration and efficiency, and encourage efficiencies by all parties continue throughout the remainder of the proceeding.

32. The following are therefore parties in this proceeding: Public Service, OCC, Staff, CEO, RTD, Charge Point, Tesla, Electrify America, EVgo, Joint EV Charging Providers, Boulder, Denver, the Environmental Organizations, SWEEP, the Environmental Justice Coalition, and EOC.

D. Pro Hac Vice Motion

33. Concurrent with its application, and as required by Commission Rule 1201, 4 CCR 723-1, and CRCP Rules 205.3 and 205.4, Ryan J. Long filed a motion to be admitted to appear *pro hac vice* in this proceeding on behalf of the Company.

34. An attorney who is not licensed to practice law in Colorado must be granted permission to appear *pro hac vice* in Commission proceedings. Rule 1201(a), 4 CCR 723-1, of the Commission's Rules of Practice and Procedure, govern the admission of out-of-state attorneys. Rule 1201(a) requires compliance with Colorado Rule of Civil Procedure (CRCP) 205.4, which itself expressly incorporates CRCP 205.3.

35. As pertinent here, CRCP 205.3(2)(a) details what an out-of-state attorney must do to be permitted to appear *pro hac vice* and includes these requirements:

- (a) File a verified motion with the administrative agency requesting permission to appear;
- (b) Designate an associate attorney who is admitted and licensed to practice law in Colorado;

(c) File a copy of the verified motion with the Clerk of the Supreme Court Office of Attorney Regulation at the same time the verified motion is filed with the administrative agency;

(d) Pay the required fee to the Clerk of the Supreme Court collected by the Office of Attorney Regulation; and

(e) Obtain permission from the administrative agency for such appearance.

36. In the May 15, 2020, motion and its attachments, Mr. Long attests to the requirements above, and on March 19, 2020, the Commission received the proof of registration and filing fee with the Colorado Supreme Court.

37. Mr. Long's request meets necessary requirements of the Commission and CRCP, and the motion is granted.

E. Prehearing Conference and Conferral

38. We agree with the Joint Utility Filing that Public Service's TEP application move forward, and that Black Hills' flexibility will allow for the staggering of the *en banc* proceedings.⁵

39. In anticipation of a hearing, the Commission will schedule a remote prehearing conference per Rule 1409(a), 4 CCR 723-1, of the Commission's Rules of Practice and Procedure. At the remote prehearing conference, an evidentiary hearing will be scheduled, and procedural deadlines will be established.⁶ The parties are required to confer on a hearing date and procedural deadlines before the prehearing conference. As part of that conferral, the parties must discuss whether they are willing and able to hold the evidentiary hearing by video conference.⁷

⁵ The Commission addresses the Black Hills' TEP application schedule and abeyance processes through separate order in Proceeding No. 20A-0195E. *See* Decision No. C20-0500-I, Proceeding No. 20A-0195E, issued July 10, 2020.

⁶ This includes deadlines to file witness and exhibit lists, exhibits, post-hearing statements of position, settlement agreements and stipulations, and prehearing motions.

⁷ Due to the COVID-19 global pandemic, the Commission's offices are not open to the public, and therefore no in-person hearings are being held. It is unknown when the Commission will be able to hold hearings in person, but the Commission has been holding evidentiary hearings by video conference.

40. The Commission encourages the parties to submit a proposed hearing date and procedural schedule prior to the prehearing conference.⁸ In such a circumstance, provided the Commission substantially approves the proposed schedule, the Commission may vacate the prehearing conference.

41. The remote prehearing conference will be held using the web-hosted video conferencing service, GoToMeeting. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID or access code will be provided to the parties by email before the hearing, and the parties will be prohibited from distributing that information to anyone not participating in the hearing.

42. Information and direction on using GoToMeeting to attend the hearing is provided in Attachment A to this decision. The Commission strongly encourages the parties to test their ability to use GoToMeeting before the remote prehearing conference.

43. A party's failure to appear at the prehearing conference may result in decisions adverse to their interests. The Commission deems any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

44. Public Service is therefore directed to confer with the parties in this proceeding on a proposed procedural schedule. Parties shall provide, jointly if possible, a preferred procedural schedule no later than July 20, 2020, and a prehearing conference is scheduled for July 27, 2020.⁹

⁸ If the parties wish to preserve the ability to hold a hearing in-person if it becomes an option before the evidentiary hearing, the parties should ensure that Commission Hearing Room A is available for their proposed hearing dates. The parties may review the Commission's public calendar for this information, which they may find on the Commission's website. Also do not propose a hearing date on a Wednesday, particularly in the morning, due to the Commission's weekly meeting.

⁹ Due to other proceedings at the PUC, the prehearing conference, if necessary, will begin on July 27, 2020, at 11:30 a.m. and continue until completed, but no later than 1:00 p.m. Additional time can be scheduled, if necessary.

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

1. The motion to intervene filed on May 27, 2020, by Charge Point, Inc. (Charge Point) filed May 27, 2020, is granted, consistent with the discussion above.
2. The motion to intervene filed on June 1, 2020, by Tesla, Inc. (Tesla) is granted, consistent with the discussion above.
3. The motion to intervene filed June 12, 2020, by the City of Boulder (Boulder) is granted, consistent with the discussion above.
4. The motion to intervene filed on June 15, 2020, by Electrify America, LLC (Electrify America) is granted, consistent with the discussion above.
5. The motion to intervene filed jointly on June 15, 2020, by Western Resource Advocates, Sierra Club, and Natural Resource Defense Counsel (jointly, Environmental Organizations) is granted, consistent with the discussion above.
6. The alternative request seeking permissive intervention filed by the Regional Transportation District (RTD) on June 16, 2020, is granted, consistent with the discussion above.
7. The motion to intervene filed on June 16, 2020, by the City and County of Denver (Denver) is granted, consistent with the discussion above.
8. The motion to intervene filed on June 16, 2020, by the Southwest Energy Efficiency Project is granted, consistent with the discussion above.
9. The motion to intervene filed on June 17, 2020, by EVgo is granted, consistent with the discussion above.
10. The motion to intervene filed jointly on June 17, 2020, by Enel X North America, Inc, Greenlots, North America EV Box, Inc is granted, consistent with the discussion above.

11. The motion to intervene filed on June 17, 2020, by the Colorado Energy Consumers (CEC) is granted, consistent with the discussion above.

12. The motion to intervene filed jointly on June 17, 2020, by Vote Solar, GRID Alternatives, Inc., Colorado Latino Forum, and GreenLatinos (jointly, Environmental Justice Coalition) is granted, consistent with the discussion above.

13. The motion to intervene filed on June 17, 2020, by Energy Outreach Colorado (EOC) is granted, consistent with the discussion above.

14. Public Service Company of Colorado (Public Service), Staff of the Colorado Public Utilities Commission, the Office of Consumer Counsel, the Colorado Energy Office, RTD, Charge Point, Tesla, Electrify America, EVgo, Joint EV Charging Providers, Boulder, Denver, the Environmental Organizations, SWEEP, CEC, the Environmental Justice Coalition, and EOC are parties in this proceeding.

15. The of Ryan Long filed on May 15, 2020, requesting *pro hac vice* admittance in this proceeding is granted, consistent with the discussion above.

16. Public Service shall confer with the parties to this proceeding and file no later than July 20, 2020, a proposed procedural schedule, jointly, if possible.

17. Consistent with the above discussion, a remote prehearing conference is scheduled as follows:

DATE: July 27, 2020

TIME: 11:30 a.m. until concluded, but no later than 1:00 p.m.

METHOD: By video conference using GoToMeetings at link provided to parties by email

18. The parties may not distribute the GoToMeeting link, and access or ID code to non-participants.

19. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONER'S WEEKLY MEETING
July 8, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN GILMAN

Commissioners