

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 GRANTING
LATE-FILED INTERVENTION AND MOTION TO
PARTICIPATE AS AMICI CURIAE**

Mailed Date: July 15, 2020
Adopted Date: July 15, 2020

I. BY THE COMMISSION

A. Statement

1. Through this decision we grant the intervention filed by Walmart, Inc. (Walmart) on July 10, 2020 (Late Intervention Motion), and grant the request to participate in this proceeding as *amicus curiae*, filed by Black Hills Colorado Electric, LLC d/b/a Black Hills Energy (Black Hills) on July 14, 2020 (*Amici* Motion).

B. Background

2. On May 15, 2020, and as required by Senate Bill (SB) 19-077,¹ Public Service filed its Application for Approval of its 2021-2023 Transportation Electrification Plan (TEP). Public Service Company of Colorado (Public Service) requests the Commission issue an order approving the proposals contained in its 2021-2023 TEP application. Within its filing, Public Service states

¹ 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. See, § 40-5-107(1)(a), C.R.S.

its TEP is intended to support Colorado's goal of attaining 940,000 Electric Vehicles (EVs) on the road by 2030 as well as to help position Colorado as a national leader in vehicle electrification.

3. 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.

4. The Office of Consumer Counsel (OCC), the Colorado Energy Office (CEO), and Staff of the Colorado Public Utilities Commission (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: 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).

5. 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 , 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*.

6. 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. In addition, Black Hills stated that it may seek to participate in the Public Service proceeding since the Commission may interpret for the first time provisions of SB 19-077. For its part, Public Service included that it would support a belated intervention by Black Hills in the Company's TEP proceeding.

7. Through Decision No. C20-0501-I² the Commission granted all requests for permissive intervention and acknowledged the interventions as of right of OCC, CEO, and Staff. The Commission further agreed with the Joint Utility Filing that this Public Service proceeding should move forward. The Commission therefore required conferral on a proposed procedural schedule no later than July 20, 2020, and a remote prehearing conference was scheduled for July 27, 2020.

8. On July 8, 2020, Walmart filed its Late Intervention Motion. Walmart states that it has a pecuniary and tangible interest in this proceeding, including as a large commercial customer of Public Service, with 55 retail stores and related facilities within Public Service's territory. Further, Walmart states that, as part of its renewable energy and carbon reduction efforts, Walmart is committed to supporting the EV industry by providing publicly accessible EV charging stations in targeted locations, including in Colorado. Walmart states that, particularly in light of Walmart's active expansion and support of EV infrastructure, the Company's TEP could directly and

² Issued July 10, 2020.

substantially affect Walmart's goal to increase EV charging capabilities within Public Service's territory and reduce carbon emissions.

9. Walmart states that it was unable to timely file due to business and operations disruptions caused by the novel coronavirus pandemic. Walmart further represents that it conferred with the parties and that all either are unopposed or take no position to Walmart's request for late intervention.

10. Walmart further states it will adhere to all deadlines that have been, and will be, set by the Commission.

11. On July 14, 2020, Black Hills filed its *Amici* Motion, seeking leave to participate as *amici curiae* in this proceeding in order to provide legal argument to assist the Commission, in accordance with Rule 1200(c), of the Rules of Practice and Procedure 4 CCR 723-1. Black Hills states that it anticipates providing legal argument on matters of first impression for the Commission in interpreting SB 19-077.

12. Further, Black Hills states that it does not intend to provide evidentiary testimony or conduct discovery in this proceeding, and notes that the Commission has previously granted Black Hills *amici* status in Public Service proceedings that may have implications for Black Hills.³ Black Hills represents that its *Amici* Motion is unopposed.

C. Findings and Conclusions

13. 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

³ See Decision No. C13-0875-I, issued July 16, 2013, Proceeding No. 13D-0498E.

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.

14. Commission Rule 1401(a) states that, "for good cause shown" the Commission may allow late intervention, subject to reasonable procedural requirements.

15. 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.

16. We find that Walmart's inclusion at this early stage of the proceeding, which is represented as unopposed, will not prejudice Public Service or the other parties. Walmart's pleading supports a determination to permit its intervention, despite its limited delay in filing. We therefore grant the motion and waive remaining response time to the motion. Walmart is a party to this proceeding.⁴

17. Commission Rule 1200(c) provides that a non-party who desires to present legal argument to assist the Commission in arriving at a just and reasonable determination of a proceeding may move to participate as *amicus curiae*. The rule further provides that the motion identify why the non-party has an interest in the proceeding, identify the issues the non-party will address through argument, and explain why the legal argument may be useful to the Commission.

18. We agree that Black Hills Amici Motion supports its participation in this proceeding as *amici curiae*. Black Hills is granted *amici* status in this proceeding to address legal arguments, including legal arguments regarding interpretation of SB 19-077.

⁴ Walmart is reminded to review Decision No. C20-050-I, issued July 10, 2020, for procedural direction, including remote prehearing conference procedures.

19. Therefore, the Late Intervention Motion and *Amici* Motion are each granted, and response time to the remaining respective motions is waived.

II. ORDER

A. It Is Ordered That:

1. The motion to intervene filed on July 10, 2020, by Walmart, Inc., is granted, and response time is waived, consistent with the discussion above.

2. The motion seeking leave to participate as *amici curiae* filed on July 14, 2020, by Black Hills Colorado Electric, LLC d/b/a Black Hills Energy, is granted, and response time is waived, consistent with the discussion above.

3. This Decision is effective upon its Mailed Date.

B. **ADOPTED IN COMMISSIONER'S WEEKLY MEETING July 15, 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