

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0345E

IN THE MATTER OF THE VERIFIED APPLICATION OF PUBLIC SERVICE COMPANY
OF COLORADO FOR APPROVAL OF AN ECONOMIC DEVELOPMENT RATE (EDR)
PROPOSAL PURSUANT TO COLORADO HB 18-1271.

**INTERIM DECISION ADDRESSING MOTIONS
FOR INTERVENTION AND *AMICUS CURIAE*
STATUS, SETTING A PREHEARING CONFERENCE,
AND REQUIRING PARTIES TO CONFER ON A
PROCEDURAL SCHEDULE THAT INCLUDES
SUPPLEMENTAL DIRECT TESTIMONY**

Mailed Date: October 9, 2020

Adopted Date: October 7, 2020

TABLE OF CONTENTS

I.	BY THE COMMISSION	2
A.	Statement	2
B.	Procedural History	2
C.	Motion for Intervention	3
D.	Motion to Participate as <i>Amicus Curiae</i>	4
E.	Supplemental Direct Testimony	5
F.	Prehearing Conference and Conferral	6
II.	ORDER.....	7
A.	It Is Ordered That:	7
B.	ADOPTED IN COMMISSIONERS' WEEKLY MEETING October 7, 2020.	8

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

1. By this Decision, we grant the request for intervention filed by Colorado Energy Consumers (CEC) on September 23, 2020, and the request to participate in this Proceeding as *amicus curiae*, filed by Black Hills Colorado Electric, LLC (Black Hills) on September 17, 2020.

2. We further set a prehearing conference for **October 30, 2020, at 9:00 a.m.**, and require Public Service Company of Colorado (Public Service) to confer with parties and *amicus* and file a proposed procedural schedule by **October 23, 2020**, that addresses discovery processes and incorporates the filing of Supplemental Direct Testimony responding to requests for additional information identified by the Commission in this Decision.

B. Procedural History

3. On August 21, 2020, Public Service filed an Application and Direct Testimony requesting Commission approval of an economic development rate (EDR) tariff pursuant to § 40-3-104.3, C.R.S. Public Service states that its EDR proposal is consistent with statutory requirements; is competitive with the EDR programs of comparable utilities; and is an important component of economic recovery in the wake of the COVID-19 pandemic.

4. The Commission issued a Notice of Application Filed (Notice) on August 24, 2020. The Notice set a 30-day intervention period that ran through September 23, 2020.

5. By Decision No. C20-0702-I, issued October 6, 2020, the Commission deemed Public Service's Application complete and set the matter for hearing *en banc*.

6. Staff of the Public Utilities Commission (Staff) and the Office of Consumer Counsel (OCC) each timely filed a notice of intervention of right. Both parties identify multiple

issues that they plan to address based on Public Service's EDR Application and Direct Testimony.

7. On September 17, 2020, Black Hills filed a motion seeking leave to participate as *amicus curiae* in this Proceeding in order to provide legal argument to assist the Commission, in accordance with Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1200(c) of the Commission's Rules of Practice and Procedure.

8. CEC timely filed a motion for permissive intervention on September 23, 2020.

C. Motion for Intervention

9. In its motion for permissive intervention, CEC states that it is an unincorporated association of large energy consumers. CEC states that its members have pecuniary and tangible interests in this Proceeding, both as large commercial and industrial customers who may be eligible to participate in an EDR rate, and as existing energy consumers who have an interest in ensuring there are no rate increases or cross-subsidization resulting from the rate. CEC raises concerns both whether the terms of Public Service's proposed EDR tariff are sufficiently favorable to prospective customers and whether the proposed eligibility requirements are sufficiently stringent. CEC also raises concerns of whether the Application is consistent with prior Commission decisions and whether the request to defer Application expenses is warranted. No party filed a response opposing CEC's intervention.

10. Rule 4 CCR 723-1-1401(c) of the Commission's Rules of Practice and Procedure requires persons seeking permissive intervention to show the following, in pertinent 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.

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

12. We find that CEC has adequately demonstrated that its pecuniary or tangible interests will be affected and would not otherwise be represented by other parties to this Proceeding. We therefore grant CEC's motion to intervene.

13. The following are therefore parties in this Proceeding: Public Service, the OCC, Staff, and CEC.

D. Motion to Participate as *Amicus Curiae*

14. In its motion requesting to participate as *amicus curiae*, Black Hills states that the Commission's decision on Public Service's Application will invoke interpretation of House Bill (HB) 18-1271 and will thus impact any future filing by Black Hills under this same statute. Black Hills notes that, in its prior application for Commission-approval of an EDR tariff, Proceeding No. 18A-0791E, Public Service was granted *amicus curiae* status. Black Hills further states that, if granted *amicus curiae* status, its participation would be limited to providing legal arguments regarding HB 18-1271 statutory interpretation issues, and that it would not broaden the scope of the proceeding or prejudice the parties herein. No party filed a response opposing Black Hills' request to participate as *amicus curiae*.

15. Rule 4 CCR 723-1-1200(c) of the Commission's Rules of Practice and Procedure, provides, in pertinent part:

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 an *amicus curiae*. The motion shall identify why the non-party has an interest in the proceeding, shall identify the issues that the non-party

will address through argument, and shall explain why the legal argument may be useful to the Commission.

16. We find that Black Hills has identified an interest in the Proceeding, identified the issues it will address through argument, and explained why its legal argument may be useful to the Commission. We therefore grant Black Hills' motion requesting leave to participate as *amicus curiae* in this Proceeding to address legal arguments, including legal arguments regarding interpretations of HB 18-1271.

E. Supplemental Direct Testimony

17. By Decision No. C20-0702-I, issued October 6, 2020, the Commission deemed the Application complete and set it for hearing *en banc*. However, at the September 30 and October 7, 2020, Commissioners' Weekly Meetings, the Commission identified several outstanding questions associated with the Application, which were not raised by parties to this Proceeding in their interventions. In the interests of procedural efficiency and to create a complete and useful record, we direct Public Service to file Supplemental Direct Testimony in response to the following seven questions, on a date to be determined subject to conferral with parties:

- i. The anticipated size of the EDR program, number of participants, and some sense as to industries participants may come from and geographies they may be locating from and to (*e.g.*, urban, rural);
- ii. How the flexibility of new loads, and their anticipated timing, could impact the calculation of marginal costs;
- iii. How Public Service intends to conduct due diligence to assess the legitimacy of new customer load, and the type(s) of financial security used to ensure the contract term is completed;
- iv. How Public Service intends to measure and report on the effectiveness of the EDR program, which could include a variety of factors such as job creation, net economic benefit, cross-subsidization, and targeted investment in enterprise zones or opportunity zones;

- v. How the addition of new loads could help or hinder Public Service's ability to meet the requirements for decarbonization of the electric utility sector as contained in HB 19-1261 and HB 19-236;
- vi. How Public Service proposes to acquire additional renewable energy generation to meet EDR customer needs, and to what extent it anticipates EDR customers would participate in customer programs such as demand-side management and electric vehicle initiatives; and
- vii. Whether Public Service anticipates other load growth initiatives, such as vehicle electrification, having an impact on the marginal costs associated with EDR customers.

F. Prehearing Conference and Conferral

18. The Commission schedules a remote prehearing conference for October 30, 2020.

At the remote prehearing conference, an evidentiary hearing will be scheduled, and other procedural deadlines will be established.

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

20. Information and directions on using GoToMeeting to attend the remote prehearing conference is provided in Attachment A to this Decision. The Commission strongly encourages the parties to test their ability to use GoToMeeting before the scheduled start time.

21. A party's failure to appear at the remote 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.

22. We direct Public Service to confer with the parties and *amicus curiae* to develop a proposed procedural schedule, including provisions for discovery and for the filing of Supplemental Direct Testimony, consistent with the discussion above. Public Service shall file the proposed procedural schedule no later than October 23, 2020. We advise parties that the Commission prefers that the evidentiary hearing in this matter be conducted over consecutive days, concluding no later than April 9, 2021, and that Statements of Position be filed no later than April 23, 2021. Provided the Commission substantially approves the proposed schedule, the Commission may vacate the scheduled remote prehearing conference.

II. **ORDER**

A. **It Is Ordered That:**

1. The motion to intervene filed on September 23, 2020, by Colorado Energy Consumers (CEC), is granted, consistent with the discussion above.
2. Public Service Company of Colorado (Public Service), Staff of the Colorado Public Utilities Commission, the Office of Consumer Counsel, and CEC are parties in this Proceeding.
3. Black Hills Colorado Electric, LLC, is granted *amicus curiae* status in this Proceeding, pursuant to Rule 4 *Code of Colorado Regulations* 723-1-1200(c).
4. Public Service shall confer with the parties and *amicus curiae* to develop a proposed procedural schedule, consistent with the discussion above. Public Service shall file the proposed procedural schedule no later than October 23, 2020.

5. A remote prehearing conference is scheduled as follows:

DATE: October 30, 2020

TIME: 9:00 a.m.

PLACE: By video conference using GoToMeeting at a link to be provided to parties by e-mail

6. Attachment A is incorporated into this Decision.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 7, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOHN GAVAN

MEGAN M. GILMAN

Commissioners

CHAIRMAN JEFFREY P. ACKERMANN
ABSENT.