

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0534E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF THE SALE OF STREET LIGHTING FACILITIES
TO THE CITY OF GREENWOOD VILLAGE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING APPLICATION**

Mailed Date: February 18, 2020

I. STATEMENT

A. Summary

1. This Decision acknowledges the Office of Consumer Counsel's (the OCC), and Public Utilities Commission Trial Staff's (Staff) notices withdrawing their Interventions in this proceeding, and because Public Service Company of Colorado's (Public Service or the Company) Verified Application for Approval of Greenwood Village Street Lighting Sale (Application) is unopposed, the Decision grants the Application without a hearing and vacates the procedural schedule and hearing.

II. BACKGROUND, FINDINGS, ANALYSIS, AND CONCLUSIONS

2. Only the relevant procedural history is provided. Public Service initiated this matter on October 2, 2019 by filing its Verified Application with testimony and exhibits. Through its Application, the Company seeks Commission approval to sell Company-owned street lighting facilities to the City of Greenwood Village (the City), per § 40-5-105, C.R.S.

3. The Commission gave proper public notice of the Application on October 2, 2019, then referred it for disposition to an Administrative Law Judge (ALJ) on November 6, 2019.

4. Trial Staff and the OCC each filed timely notices to intervene by right; both requested a hearing on the Application. The parties agreed to a procedural schedule and hearing date, which the ALJ approved on December 2, 2019 by Decision No. R19-0965-I. *See* Unopposed Motion to Vacate Prehearing Conference, Establish a Procedural Schedule and Waive Response Time.

5. On February 3, 2020, the Company filed Supplemental Direct Testimony of Marci McKoane (McKoane Supplemental Testimony). After reviewing the McKoane Supplemental Testimony, Staff and the OCC filed their Notices of Withdrawal of Intervention (Notice(s)) on February 3, 2020. Both Notices state that the McKoane Supplemental Testimony satisfies their respective concerns about the Application; indicate that they no longer object to the Application; and withdraw their respective Interventions.

6. On February 5, 2020, the Company filed a Motion to Vacate Procedural Schedule and Request for Expedited Recommended Decision (Motion).¹ The Motion asks that the procedural schedule and evidentiary hearing be vacated and that a recommended decision be issued as soon as possible without a hearing because the Application is no longer opposed per Rule 1403 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. Motion ¶¶ 14-15. The Company also explains that an expeditious decision is necessary to facilitate forward movement toward deploying 5G technology using the street lights at issue here, consistent with federal and state law. *Id.* at ¶ 14.

¹ By email on February 5, 2020, the ALJ informed the parties that an order vacating the procedural schedule will be issued so that the parties do not expend resources unnecessarily between the time the order is issued and the upcoming procedural deadlines. That email has been included in the record in the proceeding.

7. Since the OCC and Trial Staff no longer intervene in this proceeding or otherwise object to the Application, it is uncontested. The ALJ finds that the Company's sworn testimony and attachments filed in this case includes sufficient facts to support the Application's requested relief. *See* Direct Testimony and Attachments of Marci A. McKoane, (McKoane Direct), Direct Testimony and Attachment of Laurie J. Wold (Wold Direct), and McKoane Supplemental Testimony. The ALJ concludes that this matter is ripe for a decision on the merits of the Application, and that the circumstances are appropriate to consider the Application based on the record without a formal hearing. § 40-6-109(5), C.R.S., and Rule 1403, 4 CCR 723-1. As the proponent of an order, the Company bears the burden of proof by a preponderance of the evidence. Rule 1500, 4 CCR 723-1.

8. The Company seeks Commission approval to sell all Company-owned street lighting facilities and appurtenant equipment (Street Lighting Facilities) within the Greenwood Village city limits to the City. Application at 1; McKoane Direct, 9: 1-9; McKoane Direct, Attachment MAM-1. The terms of the sale are memorialized in the Company's Purchase and Sale Agreement (PSA) with the City, attached to Ms. McKoane's Direct Testimony as Highly Confidential Attachment MAM-1.²

9. In order to maintain the safety and integrity of its distribution system, the Company does not sell its distribution poles, lines, or other distribution equipment; for the same reason, the Company will exclusively maintain the street lighting equipment attached to the Company's distribution poles until the City can replace those lights and poles. McKoane Direct, 24: 11-19—25: 17. The Company will also retain all other property in the City used to provide

² By Decision No. R20-0011-I (issued January 7, 2020), the ALJ granted the Company's request for extraordinary protection of highly confidential information, which includes information contained in the PSA.

electric service to customers in the City. McKoane Direct, 9: 18-21—10: 1-3. Under the PSA, the Company will continue to provide electric service to the Street Lighting Facilities, but the City will become “the provider of street lighting services” in the City. *Id.*, and at 10: 12-16. That service will be under the Company’s Energy Only Street Lighting Service Tariff (Schedule ESL); and the sale will not cause service to be disrupted. *Id.* at 10: 17-20. The PSA allows the Company to make attachments to the Street Lighting Facilities in the future, if necessary in relation to the Company’s operations, so long as such attachments do not interfere with the City’s use of the Street Lighting Facilities. *Id.* at 11: 1-7. The City will pay for the actual costs of converting the Street Lighting Facilities to City ownership and control. *Id.* at 22: 18-22—23: 1-4.

10. Under the sale terms, the Company must obtain a release of the Street Lighting Facilities from the Company’s corporate mortgage bond indenture; the Company is working on this and will record the indenture release when the PSA closes. *Id.* at 16: 5-13. The purchase price is based on the average net book value (NBV) of the relevant assets and includes compensation for the equivalent of two years’ of operations and maintenance expense. *Id.* at 17: 5-8; Wold Direct, 11: 1-21—12: 1-2. The proposed sale price is intended to reflect the existing cost-of-service attributable to the average street light investment in rate base; the Company believes this mitigates harm to on-going street lighting customers. Wold Direct, 7: 4-14. The Company explains that using the average NBV protects customers because it does not impact the average cost of the remaining street lights, which ensures, that all things being equal, customers’ rates will not be changed by the sale (with respect to the net investment in street lights). *Id.* at 8: 1-14.

11. The Company also states that no gain or loss will be recorded on the sale in accordance with Federal Energy Regulatory Commission Uniform Systems of Accounts plant

instructions because the sale is not for a whole operating system or operating unit. McKoane Direct at 17: 20-22—18: 1-2. The sale will be accounted for as a plant retirement, with sale proceeds recorded as salvage to the overall street lighting mass asset accumulated reserve account. *Id.* at 18: 2-6. Sale proceeds associated with compensation for operating and maintenance expenses will be recorded as “Other Electric Revenues,” in order “to compensate the Company for lost revenue of the street lights between electric rate reviews.” *Id.* at 18: 2-14. When the Street Lighting Facilities are sold, the Company will reduce “Plant in Service and the Accumulated Reserve account” for the estimated original asset cost. Wold Direct, 13: 3-6. Transaction costs are accounted for and will be reflected on the relevant income statement. *Id.* at 13: 9-15. The proposed journal entries for the transaction discussed above, are included with Ms. Wold’s testimony, as Attachment LJW-1.

12. The Company believes the purchase price and terms are reasonable and in the public interest. The Company submits that sales such as these are contemplated by the Company’s Energy Only Street Lighting Service Tariff, which includes provisions facilitating governmental customers’ ability to purchase Company-owned street lights. McKoane Supplemental Testimony, 6: 15-18. The Company also asserts that the Commission has previously determined that municipalities have the option to purchase Company-owned street lights through a voluntary sale. *Id.*, at 6: 18-22, *citing*, Decision No. C10-0286 in Proceeding No. 09AL-299E issued March 29, 2010.

13. The ALJ concludes that the Commission has authority over this matter under § 40-5-105, C.R.S. The ALJ finds that the Company has established that the proposed sale takes appropriate measures to avoid negative impacts to customers, including measures to ensure the sale does not negatively impact the Company’s ability to provide adequate and reasonable

service to customers at just and reasonable rates and charges. *See* §40-3-101, C.R.S., (2019). The ALJ concludes that the proposed sale is reasonable and prudent. As such, the ALJ finds that the Company has met its burden of proof, and that the Application and the proposed PSA are in the public interest and should be approved.

14. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

III. ORDER

A. The Commission Orders That:

1. Public Service Company of Colorado's (the Company) Verified Application for Approval of Greenwood Village Street Lighting Sale filed October 2, 2019 is granted. As such, the Company's associated Purchase and Sale Agreement with the City of Greenwood Village is approved.

2. The procedural schedule and April 6 and 7, 2020 hearing dates established by Decision No. R19-0965-I are vacated.

3. Proceeding No. 19A-0534E is closed.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

6. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

7. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

8. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge