

Decision No. R21-0038-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20F-0243E

UTILITIES BOARD OF THE CITY OF LAMAR,

COMPLAINANT,

V.

SOUTHEAST COLORADO POWER ASSOCIATION,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
GRANTING-IN-PART AND DENYING-IN-PART MOTION
TO PARTICIPATE AS AMICUS CURIAE**

Mailed Date: January 20, 2021

I. STATEMENT

A. Relevant Background

1. A more complete summary of the history of this proceeding to date is included in Decision Nos. R20-0595-I and R20-0889-I. The background relevant to this decision is included below.

2. On June 2, 2020, the Utilities Board of the City of Lamar (LUB) filed a formal complaint (Complaint) against Southeast Colorado Power Association (SECPA) in which LUB alleges that SECPA violated Commission Decision No. 76027 by “connecting and commencing electric service to [May Valley Water Association (May Valley) Well No. 7] that Decision No.

76027 granted [] LUB the right to . . . serve.”¹ LUB requests that the Commission order SECPA to cease and desist from providing electric service to May Valley, convert May Valley’s load service back to LUB, desist from converting any other LUB customer to SECPA, and compensate LUB for lost rate revenue during the conversion.

3. On June 24, 2020, SECPA filed its Answer and Counterclaims in which it denies many of LUB’s factual allegations, alleges that there had been a “change in service” justifying transfer to SECPA of the electric service to May Valley’s Well No. 7 under Decision No. 76027, proposes a methodology for compensating LUB for the transfer of May Valley’s service to SECPA, and requests a declaratory order stating, among other things, that the transfer and SECPA’s proposed compensation methodology are appropriate.²

4. On July 14, 2020, LUB filed its Reply to SECPA’s Counterclaims.

5. On November 6, 2020, the Colorado Association of Municipal Utilities (CAMU) filed a Motion for Leave to Participate as Amicus Curiae (CAMU’s Motion). SECPA filed a Response in Opposition to CAMU’s Motion on November 20, 2020.

6. On December 14, 2020, the ALJ issued Decision No. R20-0889-I that, among other things, granted CAMU’s Motion thereby allowing CAMU to participate as an *amicus curiae* and provide legal argument concerning the compensation to be paid by the receiving utility to the transferring utility, if any, as a result of the transfer of rights to serve a customer granted either by a CPCN or other Commission authorization.³

¹ Complaint at p. 2.

² See generally Answer and Counterclaim.

³ Decision No. R20-0889-I at pp. 7-8 (¶ 22).

7. On December 28, 2020, the Colorado Rural Electric Association (CREA) filed a Motion for Leave to Participate as Amicus Curiae (CREA's Motion). LUB filed a Response in Opposition to CREA's Motion on January 11, 2021.⁴

B. Analysis

8. In its Motion, CREA states that it is “the trade association representing Colorado’s electric cooperatives” and that its members provide electric service “in exclusive certificated service territories pursuant to the grant of certificates of public convenience and necessity by this Commission. Electric cooperatives are obligated to provide service in these certificated service territories, and they are entitled to serve these territories exclusively.”⁵ CREA further states that: (a) it “has extensive experience with invasions into the service territories of electric cooperatives and is uniquely positioned to provide additional context that will be useful to the Commission’s consideration of this matter;”⁶ and (b) its experience . . . will be useful to the Commission in the same manner as CAMU’s experience on issues concerning municipal utilities.”⁷ CREA requests to provide legal argument on two issues: (a) “what constitutes a change in service”; and (b) “whether compensation should be required and, if so, how to calculate that compensation.”⁸ CREA states that its “interests in this proceeding and issues on which it intends to present legal argument are similar to those presented by CAMU and accepted by the Administrative Law Judge.”⁹

9. LUB opposes CREA’s Motion for two reasons. First, LUB argues that CREA’s statement of interest in this proceeding does not satisfy the requirement of Rule 1200(c) of the

⁴ LUB filed a Corrected Response on January 12, 2021.

⁵ CREA’s Motion at p. 2 (¶¶ 1, 3).

⁶ *Id.* at p. 4 (¶ 8).

⁷ *Id.* at ¶ 9.

⁸ *Id.* at ¶ 8.

⁹ *Id.* at ¶ 9.

Commission's Rules of Practice and Procedure¹⁰ because it is too vague.¹¹ Second, LUB contends that CREA has not demonstrated any experience with, or knowledge of, the legal issues raised by the parties in this proceeding. Specifically, LUB contends that the question of whether a "change of service," or a "substantial change in the nature of the service," occurred at May Valley Well No.7 is limited to an interpretation of Decision No. 76027.¹² As to the compensation issue raised by the parties to this proceeding, LUB states that CREA has "not indicate[d] that a similar compensation issue has arisen, or is likely to arise, with its members."¹³

10. Rule 1200(c) of the Commission's Rules of Practice and Procedure states in relevant 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. . . . Unless ordered otherwise, the filing deadlines governing amicus curiae shall correspond to the deadlines applicable to the parties' opening statements of position, legal briefs or responses to motions.¹⁴

11. Here, as identified in CREA's Motion, CREA has experience with the extraterritorial provision of service by others in its members' territories. CREA believes that this experience "will be useful to the Commission in the same manner as CAMU's experience on issues concerning municipal utilities." In addition, CREA asserts that its interest in this proceeding is "similar to" CAMU's interest.¹⁵ As a result, and despite the lack of detail in CREA's explanation of its interest, the ALJ concludes that CREA has satisfied the requirements of Rule 1200(c).

¹⁰ 4 *Code of Colorado Regulations* (CCR) 721-1.

¹¹ LUB's Corrected Opposition at pp. 3-4.

¹² *Id.* at p. 4.

¹³ *Id.* at p. 5.

¹⁴ 4 CCR 721-1.

¹⁵ CREA's Motion at p. 4 (¶ 9).

12. Nevertheless, CREA shall be limited to providing legal argument concerning the compensation to be paid by the receiving utility to the transferring utility, if any, as a result of the transfer of rights to serve a customer granted either by a CPCN or other Commission authorization. The parties to this proceeding agree that the question of whether a “change of service,” or a “substantial change in the nature of the service,” occurred at May Valley Well No.7 is governed Decision No. 76027. CREA has not persuasively argued otherwise. Because CREA was not a party to the proceeding in which Decision No. 76027 issued, CREA shall not be permitted to offer legal argument concerning that issue.

13. In its Motion, CREA also suggests that the final decision in this proceeding will not be limited to the dispute between the parties. As support, CREA cites the fact that the ALJ granted CAMU’s Motion and is allowing CAMU to participate as an *amicus* in this proceeding.¹⁶ According to CREA, the ALJ’s decision makes “CREA’s participation [] necessary to provide its perspective as an association of electric cooperatives that have concerns regarding invasions into their service territory.”

14. CREA is incorrect. In Decision No. R20-0889-I, the ALJ granted CAMU’s Motion because CAMU satisfied its burden of establishing the elements in Commission Rule 1200(c) for participating as an *amicus* in this proceeding. Decision No. R20-0889-I did not broaden the issues in this proceeding.

15. Based on the foregoing, CREA’s Motion shall be granted and CREA shall be limited to presenting legal argument on the same issue on which CAMU will present legal argument. The deadline for CREA to file its *amicus* brief is February 10, 2021.

¹⁶ *Id.* at p. 4 (¶ 8) (“Until Decision No. R20-0889-I, CREA understood that this proceeding was limited to claims arising under a Commission decision involving only LUB and SECPA.”).

II. ORDER

A. It Is Ordered That:

1. For the reasons stated above, the Motion for Leave to Participate as Amicus Curiae filed by the Colorado Rural Electric Association (CREA) on December 28, 2021 is granted-in-part and denied-in-part. CREA is permitted to provide legal argument concerning the compensation to be paid by the receiving utility to the transferring utility, if any, as a result of the transfer of rights to serve a customer granted either by a CPCN or other Commission authorization. CREA's request to provide legal argument concerning "what constitutes a change of service"¹⁷ is denied. CREA must file its *amicus* brief in this proceeding by February 10, 2021.

2. This Order is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director

¹⁷ CREA's Motion at p. 4 (¶ 8).