

Decision No. R22-0618

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22AL-0130E

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IN THE MATTER OF ADVICE LETTER NO. 1881-ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO PUC NO. 8 ELECTRIC TARIFF TO IMPLEMENT THE RESILIENCY SERVICE PROGRAM TARIFF TO BECOME EFFECTIVE APRIL 24, 2022.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
GRANTING MOTION TO WITHDRAW  
ADVICE LETTER AND CLOSING PROCEEDING**

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Mailed Date: October 13, 2022

**I. STATEMENT, SUMMARY, AND BACKGROUND**

**A. Summary**

1. This Decision grants Public Service Company of Colorado’s (Public Service or the Company) “Unopposed Motion . . . To Withdraw Without Prejudice Advice Letter No. 1881-Electric Amended and Its Resiliency Service Program Tariff, Vacate the Remaining Procedural Schedule and Hearing Dates, and Waiver of Response Time” (Motion) and closes this Proceeding.

**B. Procedural History<sup>1</sup>**

2. Public Service initiated this matter on March 24, 2022 by filing Advice Letter No. 1881-Electric with Tariff Sheets Colo. PUC. No. 8 – Electric to implement a new “Schedule RSP” for a Resiliency Service Program, with a proposed effective date of April 24, 2022.

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<sup>1</sup> Only the procedural history necessary to understand this Decision is included.

3. On April 20, 2022, the Commission referred this matter to an Administrative Law Judge (ALJ), suspended the effective date of the Tariff Sheets for 120 days to August 22, 2022, and established a May 20, 2022 intervention deadline.<sup>2</sup>

4. The following entities are the interveners in this proceeding: the Office of Utility Consumer Advocate; the Colorado Public Utilities Commission's Trial Staff; the City and County of Denver; Walmart Inc.; the City of Boulder; Western Resource Advocates; the Colorado Solar and Storage Association; and the Solar Energy Industries Association.<sup>3</sup>

5. On June 8, 2022, Public Service filed an amended Advice Letter No. 1881-Electric Amended (Advice Letter) Letter No. 1881-Electric with Tariff Sheets Colo. PUC. No. 8 – Electric (Tariff Sheets) with an effective date of July 9, 2022.<sup>4</sup>

6. On June 16, 2022, the ALJ suspended the Advice Letter's effective date to March 16, 2023, per § 40-6-111(1)(b), C.R.S.; scheduled an evidentiary hearing for October 25, 26 and 27, 2022; and established a procedural schedule to accommodate the hearing.<sup>5</sup>

7. From June 29, 2022 to September 16, 2022, the parties filed written testimony consistent with the established deadlines.

8. On October 11, 2022, Public Service filed the Motion.

## **II. DISCUSSION AND FINDINGS**

9. Public Service states that no parties oppose the relief the Motion seeks.<sup>6</sup> For this reason, the Company asks that the response time to it be waived.<sup>7</sup> Given that the Motion is

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<sup>2</sup> Decision No. C22-0249 (mailed April 22, 2022) at 3-4.

<sup>3</sup> Decision Nos. R22-0352-I (mailed June 9, 2022) and R22-0352-I.

<sup>4</sup> This Decision's references to the Advice Letter and Tariff Sheets are to the amended versions of the same filed on June 8, 2022.

<sup>5</sup> Decision No. R22-0370-I (mailed June 16, 2022).

<sup>6</sup> Motion at 2.

<sup>7</sup> *Id.*

unopposed, and the closely approaching evidentiary hearing, the ALJ finds good cause to waive the response time to the Motion and does so.<sup>8</sup>

10. Under Rule 1309(e), 4 CCR 723-1, after a tariff's effective date has been suspended and scheduled for a hearing, a party wishing to withdraw the advice letter and tariff sheet must file a motion seeking leave to do so. In deciding such a motion, the Commission must consider whether the motion establishes good cause, and whether other parties may be prejudiced by the withdrawal.<sup>9</sup>

11. The Advice Letter and Tariff Sheets seek to create an optional, voluntary service for small commercial or commercial and industrial secondary, primary or transmission service customers who take service from a single metering point that have a need for higher than standard service reliability through battery energy storage and/or on-site generation assets.<sup>10</sup>

12. The Motion notes that Answer Testimony reveals significant opposition to the Company's proposed service, with some parties arguing that the proposed service would be more appropriately offered as an unregulated program.<sup>11</sup> The parties engaged in settlement negotiations, both collectively and one-on-one with the Company, but could not reach an agreement.<sup>12</sup> Given the strong opposition to the Advice Letter and Tariff Sheets, the parties' inability to reach a settlement, and because the program is voluntary, optional, and not required by statute, rule or Commission order, the Company submits that there is good cause to withdraw its Advice Letter and Tariff Sheets.<sup>13</sup> For the same reasons, the Company submits that no party

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<sup>8</sup> See Rule 1400(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

<sup>9</sup> Rule 1309(e), 4 CCR 723-1.

<sup>10</sup> See Motion at 2; see Advice Letter and Tariff Sheets filed on March 24, 2022 and June 8, 2022.

<sup>11</sup> Motion at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 3.

will be prejudiced by its withdrawal. The Company also requests that the ALJ vacate the remaining procedural schedule, including the upcoming evidentiary hearing dates.<sup>14</sup>

13. For the reasons stated in the Company's Motion, the ALJ finds that allowing the Company to withdraw the Advice Letter and Tariff Sheets will not prejudice any party, and that the Company has established good cause to withdraw the same. This is particularly the case given that no party objects to the Company withdrawing the Advice Letter and Tariff Sheets. For these reasons, the ALJ grants the Motion, deems the Advice Letter and Tariff Sheets withdrawn without prejudice, and vacates the remaining procedural schedule.

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

### **III. ORDER**

#### **A. The Commission Orders That:**

1. Consistent with the above discussion, the Unopposed Motion by Public Service Company of Colorado to Withdraw Without Prejudice Advice Letter No. 1881-Electric Amended and Its Resiliency Service Program Tariff, Vacate the Remaining Procedural Schedule and Hearing Dates, and Waiver of Response Time is granted.

2. The remaining procedural schedule in this Proceeding is vacated, including the October 25, 26, and 27, 2022 evidentiary hearing.

3. Proceeding No. 20AL-00130E 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

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<sup>14</sup> *Id.*

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)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MELODY MIRBABA

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director