Decision No. R25-0382

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23D-0591E

IN THE MATTER OF THE COLORADO COMMUNICATION AND UTILITIES ALLIANCE, THE TOWN OF MORRISON, AND THE CITIES OF ARVADA, AURORA, CENTENNIAL, NORTHGLENN, AND WHEAT RIDGE'S PETITION FOR A DECLARATORY ORDER REGARDING PUBLIC SERVICE COMPANY OF COLORADO'S CUSTOMER OWNED LIGHTING TARIFF AND PAYMENT RESPONSIBILITY FOR STATE AND INTERSTATE HIGHWAY STREETLIGHTING.

RECOMMENDED DECISION GRANTING, IN PART, PETITION FOR DECLARATORY ORDER

Issued Date: May 21, 2025

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I. PROCEDURAL3DBACKGROUND[1]

1. On December 4, 2023, the Colorado Communication and Utilities Alliance ("CCUA"), the Town of Morrison, and the Cities of Arvada, Aurora, Centennial, Northglenn, and Wheat Ridge ("Local Governments") (collectively, the "Petitioners") filed a Petition for Declaratory Order ("Petition") initiating this Proceeding. In the Petition, the Local Governments request that the Colorado Public Utilities Commission ("Commission" or "PUC") clarify certain provisions relating to the payment responsibility for interstate and state highway streetlighting.

2. On December 21, 2023, the Public Service Company of Colorado's Notice of Intervention as of Right, Unopposed Alternative Motion for Permissive Intervention, and Request for Waiver of Response Time was filed by Public Service Company of Colorado ("Public Service" or "the Company" or "PSCo").

3. By Decision No. C23-0861-I, the Commission construed the Joint Motion to Stay the Commission's Determination of Whether to Accept or Deny the Petition, filed by Public Service and the Colorado Department of Transportation ("CDOT") on December 19, 2023 and set deadlines for the filing of any responses to the Petition and replies to any responses.

4. On December 29, 2023, the Colorado Department of Transportation's Notice of Intervention as of Right and Alternative Motion for Permissive Intervention was filed by CDOT.

5. By Decision No. C24-0079-I, mailed February 7, 2024, the Commission, among other things: accepted the Petition; acknowledged the Company as an intervenor of right, granted CDOT's permissive intervention; denied CDOT's Motion in Opposition to Local Governments' Petition for Declaratory Order and Partial Motion to Dismiss that was filed on January 3, 2024, and assigned this matter to an Administrative Law Judge ("ALJ"). In Decision No. C24-0079-I,

[1] Only the procedural history necessary to understand this Decision is included.

the Commission stated that "to the extent necessary, the ALJ assigned to this matter will determine which statutory interpretations are required by the Commission to clarify Public Service's ability to transfer payment responsibility, and whether it is appropriate for the Commission to opine on such interpretations in the context of [the] Petition."[2]

6. By Decision No. R24-0585-I, issued August 14, 2024, an ALJ, among other things, waived the prohibition against filing replies and/or reply briefs codified in Rule 1400(e) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1 and set a briefing schedule for the merits of the Petition.

7. By Decision No. R24-0866-I, issued November 22, 2024, the undersigned ALJ amended the briefing schedule in this Proceeding, requiring CDOT and the Company to file any responsive brief to the Petition within 35 days from the date of service of a decision in this Proceeding addressing the substance of Colorado Department of Transportation's Renewed Motion for Partial Dismissal for Lack of Subject Matter Jurisdiction that was filed on September 13, 2024 ("CDOT's Motion for Summary Judgment") and the Petitioners to file any reply brief within 30 from the latter date of service of CDOT's or Public Service's responsive briefs.

8. By Decision No. R24-0949-I, issued December 31, 2024, the undersigned ALJ denied CDOT's Motion for Summary Judgment.

9. On February 4, 2025, Public Service Company of Colorado's Responsive Brief on the Merits of the Petition for a Declaratory Order, Filed by the Colorado Communications and Utilties[3] Alliance, the Town of Morrison, and the Cities of Arvada, Aurora, Centennial, Northglenn, and Wheat Ridge, Regarding Public Service Company of Colorado's Customer

[2] Decision No. C24-0079-I, mailed February 7, 2024 at p. 12.
[3] The word "Utilities" in the title of this filing contained a typographical error ("Utlities").

Owned Lighting Tariff and Payment Responsibility for State and Interstate Highway Streetlighting (the "Company's Response Brief") was filed by the Company.

10. On February 4, 2025, the Colorado Department of Transportation's Response Brief ("CDOT's Response Brief") was filed by CDOT.

11. On March 6, 2025, the Responsive Brief of the Colorado Communications and Utility Alliance, the Town of Morrison, and the Cities of Arvada, Aurora, Centennial, Northglenn, and Wheat Ridge to the Response Briefs of the Colorado Department of Transportation and Public Service Company of Colorado ("Petitioners' Reply Brief") was filed by the Petitioners.[4]

II. THE RECORD

12. No evidentiary hearing was requested or held in this Proceeding.[5] This Recommended Decision is issued based solely on the written record, including pleadings, attachments, and exhibits, consistent with § 24-4-105(14), C.R.S., and Rule 1501(b) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

III. RELEVANT LAW

13. The Commission derives its authority to regulate public utilities, and their facilities, service, and rates from article XXV of the Colorado Constitution and from Articles 1 through 7 of Title 40, C.R.S. (the "Public Utilities Law"). The Commission has broad authority to regulate public utilities. "[T]he PUC's authority under article XXV is not narrowly confined but extends to incidental powers which are necessary to enable it to regulate public utilities."

[4] This filing contains two primary sections with two titles: the first section entitled "Responsive Brief of the Colorado Communications and Utility Alliance, the Town of Morrison, and the Cities of Arvada, Aurora, Centennial, Northglenn, and Wheat Ridge to the Response Briefs of the Colorado Department of Transportation and Public Service Company of Colorado" (Petitioners' Reply Brief at p. 1) and the second section is entitled "Reply to the Colorado Department of Transportation and Public Service Company of Colorado's Response Briefs." The Local Governments' (Petitioners' Reply Brief at p. 13).

[5] *See* Decision No. R24-0585-I, issued August 14, 2024, at p. 3.

14. Colo. Const. Art. XXV states:

> In addition to the powers now vested in the General Assembly of the State of Colorado, all power to regulate the facilities, service and rates and charges therefor, including facilities and service and rates and charges therefor within home rule cities and home rule towns, of every corporation, individual, or association of individuals, wheresoever situate or operating within the State of Colorado, whether within or without a home rule city or home rule town, as a public utility, as presently or as may hereafter be defined as a public utility by the laws of the State of Colorado, is hereby vested in such agency of the State of Colorado as the General Assembly shall by law designate.

15. Section 40-3-102, C.R.S. states:

> The power and authority is hereby vested in the public utilities commission of the state of Colorado and it is hereby made its duty to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of every public utility of this state to correct abuses; to prevent unjust discriminations and extortions in the rates, charges, and tariffs of such public utilities of this state; to generally supervise and regulate every public utility in this state; and to do all things, whether specifically designated in articles 1 to 7 of this title or in addition thereto, which are necessary or convenient in the exercise of such power, and to enforce the same by the penalties provided in said articles through proper courts having jurisdiction; except that nothing in this article shall apply to municipal natural gas or electric utilities for which an exemption is provided in the constitution of the state of Colorado, within the authorized service area of each such municipal utility except as specifically provided in section 40-3.5-102.

16. The Commission has exclusive jurisdiction over disputes involving electric utility tariffs filed with the PUC.[6]

17. "A tariff created through the exercise of properly delegated legislative authority has the force and effect of state law."[7]

18. Sheet No. 98B of Public Service Co. of Colo., Colo. P.U.C. Electric Tariff, Public Street and Highway Lighting Service, Street Lighting Service, Effective Jan. 21, 2019 (the

[6] Colo. Const. Art. XXV; § 40-3-102, C.R.S.; *Mountain States Tel. & Tel. Co. v. Pub. Utilities Comm'n*, 195 Colo. 130, 134, 576 P.2d 544, 547 (1978).

[7] *U S West Communications v. City of Longmont*, 924 P.2d 1071, 1079 (Colo. App. 1995).

"SL Tariff") states, in part: "This section is applicable to municipalities within the Company's service territory that elect to receive service under these municipal provisions."

19. On Sheet No. 100C of Public Service Co. of Colo., Colo. P.U.C. Electric Tariff, Public Street and Highway Lighting Service, Customer-Owned Lighting Service, Effective Jan. 1, 2017 (the "COL Tariff") it is stated:

> When existing street lights owned by CDOT of the type billed on Customer-Owned Lighting Service, Schedule COL, become located within municipal boundaries by annexation or otherwise or when existing highway lights within municipalities which were originally installed by CDOT at no cost to the Company, are replaced by CDOT at no cost to the Company, and the municipality requests that such lights be billed under Street Light Service, payment of the current effective Lighting Equipment Portion of the Construction Allowance applicable to Street Lighting Service will be made to the appropriate municipal Customer(s) for such lights. After such payment, these Customers will be billed Monthly for such lights under the appropriate Street Lighting Service, Schedule SL rate and no further Construction Allowance payments will be made for such lights.
>
> When ownership of existing street lighting facilities is to be transferred to Company, Customer shall be responsible for bringing such facilities into compliance with Company standards, and Company shall not be obligated to assume ownership and maintenance responsibilities for such facilities until compliance with Company standards has been achieved. If the current Construction Allowance has not already been made for the lights involved in the ownership transfer, then Company shall make Construction Allowance payments to Customer in accordance with the Street Lighting Extension Policy.

20. Section 43-2-135(1), C.R.S. (the "Division of Authority Statute") provides in part:

> The jurisdiction, control, and duty of the state, cities, cities and counties, and incorporated towns with respect to streets which are a part of the state highway system is as follows:
>
> ***
>
> (e) The city, city and county, or incorporated town at its own expense shall provide street illumination and shall clean all such streets, including storm sewer inlets and catch basins.

***

> (i) The department of transportation shall install, operate, maintain, and control at state expense all traffic control signals, signs, and traffic control devices on state highways in cities, the city and county of Denver, the city and county of Broomfield, and incorporated towns. No local authority shall erect or maintain any stop sign or traffic control signal at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the department of transportation. For the purpose of this paragraph (i), striping, lane-marking, and channelization are considered traffic control devices.

21. While the Commission may consider the Division of Authority Statute as interpretive context, it has no jurisdiction to enforce obligations under that statute directly. In this Proceeding, the Commission's role is limited to determining whether a utility's conduct comports with its Commission-approved tariffs.[8]

22. Under the filed-rate doctrine, utilities may only charge rates or assign responsibilities as specifically authorized by Commission-approved tariffs. Deviation from tariff provisions, however logical or convenient, is not permitted.[9]

23. Rule 1304(f)(II) of the Rules of Practice and Procedure 4 CCR 723-1 provides that "[t]he Commission may issue a declaratory order to terminate a controversy or to remove an uncertainty affecting a petitioner with regard to any tariff, statutory provision, or Commission rule, regulation, or order."

IV. THE PARTIES' POSITIONS

A. The Petitioners' Position

24. In the Petition, the Petitioners seek:

[8] *See Id.*; *City & Cnty. of Denver v. Pub. Utilities Comm'n*, 181 Colo. 38, 46, 507 P.2d 871, 875 (1973); *Pub. Serv. Co. of Colorado v. Pub. Utilities Comm'n of State of Colo.*, 653 P.2d 1117, 1121 (Colo. 1982).

[9] *Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 127, 110 S.Ct. 2759, 111 L.Ed.2d 94 (1990) (*quoting Louisville & Nashville R.R. Co. v. Maxwell*, 237 U.S. 94, 97, 35 S.Ct. 494, 59 L.Ed. 853 (1915)); *see also City of Boulder v. Pub. Utils. Comm'n*, 996 P.2d 1270 (Colo. 2000).

> a declaratory order from the Commission clarifying that, consistent with the terms of state law and the COL Tariff, the payment responsibility for interstate and state highway streetlighting shall remain with CDOT unless 1) the state or interstate highway where the street light resides has been accepted into municipal street system; 2) the municipal customer has ownership of the street light or has agreed to the payment responsibility for that street light; and 3) prior to that street light being transferred to the SL Tariff, the transfer procedures of the COL Tariff are followed including a request from the municipal owner of the street light that the street light be transferred to the SL Tariff and payment of the then applicable constriction [*sic*] allowance.[10]

25. The main argument of the Petitioners, as set forth in Petitioner's Reply Brief, is that the COL Tariff contains specific, binding procedures that must be followed before PSCo can transfer streetlight payment responsibility from CDOT to local governments.[11] According to the Petitioners, these procedures have not been followed, and the payment responsibility transfer is therefore unauthorized.[12] Specifically, according to the Petitioners, the transfer streetlight payment responsibility from CDOT to local governments is a four-step process: 1) the streetlights must be within the jurisdiction of the local government,[13] 2) the transfer must be requested by the local government,[14] 3) PSCo must pay a "Lighting Equipment Portion of the Construction Allowance" to the local government upon transfer,[15] and 4) only after the previous three requirements have been met can streetlight payment responsibility shift from those set forth in the COL Tariff to those set forth in the SL Tariff.[16]

26. In replying to the arguments set forth in the Company's Response Brief and CDOT's Response Brief, the Petitioners make four primary counter-arguments. First, the

[10] Petition at p. 13. The term "COL Tariff," as used in the Petition, refers to Public Service's Customer-Owner Tariff in question in this Proceeding (hereinafter "COL Tariff"). *See generally*, Petition.
[11] Petitioner's Reply Brief at pp. 5, 7, 12-13, 18, 25.
[12] *Id*.
[13] *Id*. at pp. 8-9.
[14] *Id*. at pp. 9-10.
[15] *Id*. at p. 10.
[16] *Id*.

Petitioners argue that the Division of Authority Statute is merely relevant context for the dispute at issue, rather than the primary basis for the requests made in the Petition.[17] In support of this counter-argument, the Petitioners state that "CDOT"'s entire argument against the Petitioners' requested relief is centered on an argument that the Commission should not *only* interpret the Division of Authority statute but also *enforce* it… irrespective of any applicable tariffs."[18] The Petitioners further argue CDOT's attempt to force municipalities to accept payment responsibility for streetlights "is not the proper subject of a declaratory judgement proceeding…"[19]

27. The COL Tariff, the Petitioners maintain, sets out clear prerequisites for payment transfers pursuant to which customer-owned streetlight service may shift from CDOT to municipalities.[20] In support of this counter-argument, the Petitioners point out that "[t]he Local Government's requested relief in this proceeding, consistent with the undisputed facts, is a declaration that within PSCo's service territory neither CDOT nor PSCo can unilaterally transfer payment responsibilities to Local Governments without PSCo following its tariffs including the specific transfer process outlined in the COL Tariff where applicable."[21] Next, the Petitioners argue that if the Commission were to adopt CDOT's position, PSCo would be permitted to disregard its tariffs and the Commission's whenever PSCo believed a statute authorized it to do so.[22] In support of this argument, the Petitioners explain that CDOT's argument that the Division of Authority Statute abrogates common law principles that apply generally to any exchange or transfer of goods is, in essence, an argument "that by enacting the Division of Authority statute the General Assembly intended to override both the Commission's constitutional authority to set the rates,

[17] Petitioner's Reply Brief at pp.14-17.
[18] *Id*. at p. 14 (*citing* CDOT's Response Brief at p. 6) (emphasis in the original).
[19] *Id*. at p. 15.
[20] *Id*. at pp. 17-18.
[21] *Id*. at p. 18.
[22] *Id*. at p. 18-20.

rules, and regulations for electric service to municipal streetlights as well as any other statutory or common law principles which might apply to the transfer or exchange of goods."[23]

28. Next, the Petitioners argue that PSCo's argument that the Local Governments "wrongfully assumed, or speculated that CDOT owns the disputed streetlights or Public Service at some point thereafter transferred payment responsibilities to the Petitioner Municipalities" is contradicted by discovery records showing CDOT's ongoing payment responsibilities.[24] The Petitioners point out that: "[a]ccording to records produced by CDOT at least 950 and possibly more state and interstate highway streetlights are currently served under the COL tariff versus 22 on the SL tariff[;]"[25] "PSCo admits that street lights constructed by CDOT within municipal boundaries are being directly placed on the SL tariff without following any procedure for the transfer of responsibility[;]"[26] and PSCo "acknowledges at least one instance of PSCo requiring the transfer of responsibility from CDOT to a local government."[27]

29. The Petitioners identify specific highway segments and associated streetlights within municipal boundaries where they assert CDOT has historically paid for service, including:

- Aurora: I-225 and I-70 ramp
- Centennial: approximately 34 lights along I-25
- Morrison: 22 lights on C-470
- Arvada, Northglenn, Wheat Ridge: multiple ramps on I-25 and I-76.[28]

[23] *Id*. at p. 19 (*citing* CDOT's Response Brief at p. 6).
[24] *Id*. at p. 20 (quoting from the Company's Reply Brief at pp. 11-12).
[25] *Id*. (acknowledging that the data provided by CDOT "is probably incomplete" and referencing Footnote 19 in Petitioner's Reply Brief, which discusses the apparent discrepancies in CDOT's discovery responses regarding the number and location of streetlights and their corresponding tariff).
[26] *Id*. at pp.20-21 (citing the Company's Response to Discovery Request LG1-A-5, Attachment A to Petitioner's Reply Brief).
[27] *Id*. at p. 21 (citing the Company's Response to Discovery Request LG1-I-3, Attachment A to Petitioner's Reply Brief).
[28] Exhibit D to Petitioner's Reply Brief, filed March 6, 2025, at pp. 2-3.

30. The Petitioners further contend that none of the Local Governments are currently billed under the COL Tariff, and that billing records confirm lack of ownership or formal transfer documentation.[29]

31. Lastly, the Petitioners argue that PSCo misconstrues the petition as a request to avoid paying electric charges.[30] The Petitioners explain that "[t]he question presented by the Petiton [*sic*]… is not whether the local governments can lawfully choose to not pay their electric bills for service to which they are a customer. Rather it is whether PSCo may lawfully require the Local Governments to be a customer for services they do not wish to receive."[31]

B. CDOT's Position

32. In CDOT's Response Brief CDOT opposes the Petition on the primary grounds that the Division of Authority Statute unambiguously controls and requires political subdivisions to be responsible for providing, at their own expense, street lighting along state highways, including interstates, that pass through their jurisdictions.[32] CDOT maintains that the Petitioners are improperly attempting to create ambiguities where none exist in order to avoid their statutory obligations.[33]

33. According to CDOT, the Division of Authority Statute "requires cities, cities and counties, and incorporated towns to provide street illumination, at their sole cost and expense, for streets which are part of the state highway system," and the Petitioners' attempt to insert conditions based on utility tariffs or other agreements is an unsupported effort to evade those duties.[34]

[29] The Local Government's Reply Brief at p. 6; Exhibit D to Petitioner's Reply Brief, filed March 6, 2025 at pp. 12-13.
[30] Petitioner's Reply Brief at pp. 24-25.
[31] *Id*. at p. 25.
[32] CDOT's Response Brief at pp. 2-3.
[33] *Id*. at pp. 2, 4-5.
[34] *Id*. at p. 2.

CDOT emphasizes that the statutory obligation is distinct from, and unaffected by, any terms in the Company's tariffs, arguing that "PSCo's tariffs were not promulgated under the Division of Authority Statute," and therefore cannot alter or impose conditions on the statutory obligation. CDOT insists that statutory interpretation must be done independently of the utility tariffs, stating that "an agency regulation or rule may not modify or contravene an existing statute, and any regulation that is inconsistent with or contrary to a statute is void."[35] This argument undercuts the Petitioners' position that certain prerequisites must be met, such as acceptance of ownership or following specific tariff procedures, before the Local Governments are required to pay for lighting costs.[36]

34. Further, CDOT disputes the notion that interstates cannot be considered "streets that are part of the state highway system."[37] Citing § 43-2-101(1), C.R.S., CDOT argues that the state highway system "shall consist of the federal-aid primary roads, the federal-aid secondary roads, and the interstate system, including extensions thereof within urban areas," and therefore, interstates unquestionably fall within the scope of the statutory mandate.[38] CDOT criticizes the Petitioners' claim that obligations only attach after a local government has "accepted" a state or interstate highway or associated lighting infrastructure into its street system.[39] CDOT asserts that "neither the Division of Authority Statute, nor any other applicable legal authority contains a requirement for Political Subdivision[s] to 'accept' a state highway into their respective street systems or to 'accept' or otherwise own the lighting fixtures" before their responsibility arises.[40] CDOT's Response Brief underscores that the Division of Authority Statute applies to a very

[35] *Id*. at pp. 3-4.
[36] *Id*. at pp. 2-3, 6-7, 8.
[37] *Id*. at pp. 7-9.
[38] *Id*. at pp. 5-6.
[39] *Id*. at pp. 6-7.
[40] *Id*. at pp. 2-3.

specific circumstance - where state highways pass through local jurisdictions.[41] CDOT further argues that by using the phrase "streets that are part of the state highway system" the general assembly intended to describe this very scenario.[42] CDOT references § 43-1-217, C.R.S., which authorizes state highways to be constructed through cities and counties, cities, or towns, as further evidence that the state legislature intended state highways, including interstates, to be treated as local streets in those jurisdictions for purposes such as lighting.[43] CDOT argues that failing to recognize this would lead to absurd results, such as leaving parts of urban interstates unlit due to a lack of statutory clarity.[44] Addressing Petitioners' argument that CDOT's own conduct has been inconsistent with the statute, CDOT counters that any failure by the department to uniformly enforce or apply the statute does not nullify the legal obligation. CDOT maintains, "Even if the Local Governments' allegations are correct, which CDOT denies, CDOT is unaware of any legal authority that invalidates statutory obligations if they are not uniformly followed."[45]

35. CDOT also emphasizes that the statute does not give CDOT or the PUC any enforcement authority, and that compliance is based on mutual recognition of duties, not regulatory oversight.[46] In fact, CDOT argues that Local Governments themselves have shown no meaningful attempt to fulfill their responsibilities, noting that in response to discovery requests, the Local Governments failed to provide evidence of efforts to comply with the Division of Authority Statute.[47] CDOT also highlights the practical benefits the Local Governments have received by the illumination infrastructure.[48] CDOT has often installed streetlighting infrastructure during

[41] *Id*. at p. 7.
[42] *Id*.
[43] *Id*. at pp. 7-8.
[44] *Id*. at pp. 8-9.
[45] *Id*. at pp. 12-13.
[46] *Id*. at p. 13.
[47] *Id*. at pp. 13-14.
[48] *Id*. at pp. 11-12.

highway construction projects, which is both more cost-effective and logistically feasible than retroactive installation.[49] These installations, CDOT argues, are a benefit to Local Governments who are statutorily required to provide illumination but often did not pay for the infrastructure installation itself.[50] Yet, even in these cases, CDOT contends the Local Governments are legally obligated to cover the cost of energy and maintenance of those lights, regardless of ownership or acceptance.[51]

36. In conclusion, CDOT requests that the Commission deny the relief sought by the Petitioners and instead issue a declaratory order affirming that political subdivisions are required, under Colorado law, to provide and pay for street illumination, both the electric service and, to the extent the PUC has jurisdiction, the supporting infrastructure—on state and interstate highways within their municipal boundaries. CDOT stresses that "Political Subdivisions shall provide street illumination at their respective expense without exception,"[52] and reiterates that any contrary interpretation would be inconsistent with the statute's plain meaning, legislative history, and the principles of sound statutory construction.

C. The Company's Position

37. The Company opposes the Petition, arguing that under both applicable law and tariff provisions, the Local Governments, rather than CDOT, bear responsibility for payments of electric service for streetlights on state and interstate highways located within municipal boundaries.[53] In support of this position, Public Service highlights a number of jurisdictional and factual discrepancies in the Petition. Specifically, it notes that many members of CCUA, one of

[49] *Id*. at p. 12-13.
[50] *Id*. at p. 11.
[51] *Id*. at p. 12.
[52] *Id*. at p. 10 (citing § 43-2-135(e), C.R.S.).
[53] The Company's Response Brief at p. 16.

the Petitioners herein, are outside its electric service territory and thus unaffected by the outcome.[54] Public Service also challenges the narrative presented regarding the Town of Morrison's unpaid bills, explaining that Morrison had not paid for any streetlighting since 2017, including for 22 streetlights on C-470, and that Public Service only requested payment for those specific delinquent charges, not others.[55] The Company noted that "Morrison's past due balance for the 22 streetlights located within the Town's municipal limits along C-470 remain unpaid."[56]

38. The Company also refutes allegations of broader coercive billing practices, asserting that none of the other municipalities had been subject to similar payment demands and that "Morrison is the only Local Government Public Service has asked to pay its delinquent electric bills for the disputed C-470 streetlights."[57]

39. Public Service disputes the claim in the Petition that the Company has attempted to transfer payment obligations under the COL Tariff from CDOT to the municipalities comprising the Petitioner, emphasizing instead that the affected streetlights are Public Service-owned and billed under the SL Tariff.[58] According to the Company, "[t]he Petitioner Municipalities are...properly billed for those streetlights under the SL Tariff, not the COL Tariff."[59]

40. Public Service details the COL Tariff and SL Tariff and frameworks. According to the Company, the SL Tariff applies to Company-owned streetlights and includes no mechanism for transferring payment responsibility.[60] The Company further explains that the COL Tariff,

[54] *Id*. at p. 3.
[55] *Id*. at pp. 3-4.
[56] *Id*. at p. 4.
[57] *Id*.
[58] *Id*. at p. 5.
[59] *Id*. at p. 11.
[60] *Id*.

which applies to customer-owned streetlights, permits a transfer of responsibility only under narrow, well-defined circumstances, none of which are present here, as follows:

> for existing streetlights CDOT may transfer the payment responsibility for existing streetlights billed under the COL Tariff to a municipality under narrowly defined conditions:
>
> I. 'When existing street lights owned by CDOT of the type billed on Customer-Owned Lighting Service, Schedule COL, become located within municipal boundaries by annexation or otherwise', or
>
> II. 'when existing highway lights within municipalities which were originally installed by CDOT at no cost to the Company, are replaced by CDOT at no cost to the Company,' and
>
> III. 'the municipality requests that such lights be billed under Street Light Service'.[61]

41. Regarding the legal framework, Public Service contends that Colorado law, specifically § 43-2-135(1)(e), C.R.S., makes clear that municipalities are responsible for providing and paying for street illumination within their limits, even when the street in question is part of the state highway system.[62] It argues that the Petition's contrary interpretation would "lead to an illogical result"[63] and fails to recognize that city street systems explicitly exclude roads already designated as part of the state highway system, such as C-470.[64]

42. The Company concludes that, regardless of how future responsibilities may be assigned, local governments, particularly Morrison, are currently responsible under both law and Commission-approved tariffs to pay for electric services already rendered.[65] Public Service warns that any ruling relieving these entities of payment obligations would result in unfair cost shifting

[61] *Id*. at p. 9 (*citing* Customer-owned Lighting Service, Schedule COL, Public Service COLO. PUC No. 8 Electric, Tariff Sheet No. 100C (Effective on January 1, 2017)).
[62] *Id*. at pp. 14-16.
[63] *Id*. at p. 14.
[64] *Id*. at pp. 15-16.
[65] *Id*. at p. 19.

to other ratepayers.[66] "If customers lawfully required to pay...refuse to pay...the result is all the other electric customers are subsidizing the free ride."[67]

43. For the reasons summarized above, Public Service requests that the Commission deny the Petition and instead issue a declaratory order affirming that municipalities are responsible for paying electric bills for streetlights on state and interstate highways within their jurisdictions.[68]

V. FINDINGS, ANALYSIS, AND CONCLUSIONS

44. This Decision does not interpret or enforce the duties of CDOT or any party under Title 43, C.R.S. (the "Transportation Code"), nor does it compel any entity to accept ownership or liability under the Transportation Code. Rather, this Decision adjudicates Public Service's obligations under Commission-approved tariffs and whether those tariffs authorize the reassignment of payment responsibility to municipalities.

45. This Recommended Decision addresses the declaratory relief requested in the Petition, as framed by Decision No. C24-0079-I, and specifically concerns the interpretation and application of the COL Tariff in determining financial responsibility for streetlighting service on state and interstate highways located within municipal boundaries.

46. The central issue in this Proceeding is whether Public Service may lawfully reassign payment responsibility for streetlighting service located within municipal boundaries to local governments, consistent with the terms of its tariffs and applicable law. According to the Petitioners, unless Public Service follows the COL Tariff's specified transfer provisions, municipalities cannot lawfully be assigned responsibility for payment.[69]

[66] *Id*. at pp. 16-19.
[67] *Id*. at p. 16.
[68] *Id*. at p. 20.
[69] *See* Petitioners' Reply Brief at pp. 8-11.

47. The Division of Authority Statute does not displace the Commission's exclusive jurisdiction over utility rates and tariffs. While the Division of Authority Statute may establish municipal obligations as a matter of transportation or local government law, it does not override the procedural and substantive requirements utilities must follow under Commission-approved tariffs. Tariffs, once approved by the Commission, have the force and effect of law and govern all rate assignments, regardless of external statutory mandates.[70]

48. Based on the uncontested documentary record, the ALJ finds that CDOT currently pays for streetlighting service along state and interstate highways, including portions located within municipal boundaries, and Public Service has not effectuated any formal reassignment of payment obligations for at least some such infrastructure.[71]

49. There is no evidence in the record that any municipality has affirmatively requested service under the SL Tariff, accepted ownership of the subject streetlights, or assumed maintenance responsibility for said streetlights, whether formally or by implication. Public Service's continued billing of CDOT for these streetlights, coupled with the absence of franchise

[70] *See Colorado Mun. League v. Pub. Utils. Comm'n*, 197 Colo. 106, 114, 591 P.2d 577, 582 (1979) (holding it arbitrary and capricious for the Commission to authorize a utility to impose a surcharge on municipal customers to recover franchise, license, and tax payments required by those municipalities, where such costs were not incorporated into the approved tariff and stemmed from external statutory obligations); *see also*, Colo. Const. art. XXV; § 40-3-102, C.R.S.

[71] *See* Exhibit A to CDOT's Response Brief, filed February 4, 2025, The Local Governments' First Responses to Public Service Company of Colorado's First Set of Corrected Discovery Requests at pp. 2-5, 8-17 (Responses to Discovery Requests PSCo 1-1, 1-2, 1-4, 1-5, 1-6, 1-7, 1-8); Exhibit A to Petitioner's Reply Brief, filed March 6, 2025, Public Service Company of Colorado's Responses to Local Government's First Set of Discovery Requests at pp. 33-4, 39-40 (Discovery Requests LG1-R-9 and LG1-R-13); Exhibit B to Petitioner's Reply Brief, filed March 6, 2025, Colorado Department of Transportation's Responses to the Colorado Communications and Utility Alliance, the Town of Morrison, and the Cities of Arvada, Aurora, Centennial, Northglenn, and Wheat Ridge First Set of Discovery Requests at pp. 4, 5-6, 8 (Responses to Requests for Admission A-6 and A-7 and Interrogatories No. I-2, I-7, and CDOT's Discovery Exhibits 025529 -025534, 025544-025549, 025536, 025539, and 025543.

amendments, metering agreements, or municipal requests, supports a finding that no lawful transfer of payment responsibility has occurred under the COL Tariff.[72]

50. Under the terms of the COL Tariff, Public Service may reassign payment responsibility for streetlighting service from CDOT to a municipality only when four specific conditions are satisfied. First, the affected streetlights must be owned by CDOT at the time of transfer. Second, the infrastructure must be located within the boundaries of the municipality, whether through annexation or other means. Third, the lights must have been installed or replaced by CDOT without any cost to Public Service. Finally, the municipality must take affirmative steps to request billing under the SL Tariff, transfer ownership of the lights, and accept the applicable construction allowance.[73] The COL Tariff and SL Tariff do not authorize automatic reassignment of billing responsibility based solely on the geographic location of streetlighting infrastructure, nor do they permit reclassification absent compliance with these procedural prerequisites.

51. The assertion that municipalities may be compelled to pay for infrastructure they neither requested, installed, owned, nor accepted conflicts with the COL Tariff's express requirements and violates the filed-rate doctrine, which bars utilities from imposing charges not explicitly authorized by a Commission-approved tariff, even when such charges are purportedly justified by external statutory obligations.[74]

52. The Division of Authority Statute states that local governments "shall provide street illumination" at their own expense for streets that form part of the state highway system within municipal boundaries. CDOT and Public Service interpret this as a mandatory obligation that

[72] *See id*. The undersigned ALJ notes that the absence of any formal ownership transfer, assumption of maintenance obligations, or execution of metering or franchise agreements precludes a municipality from being treated as a lawful customer under the SL Tariff

[73] The COL Tarriff and SL Tariff are distinct service classifications that not only prescribe different rates, but also establish separate conditions for who qualifies as a lawful customer under each tariff.

[74] *See also*, Colo. Const. art. XXV; § 40-3-102, C.R.S.

supersedes any contrary tariff requirements. The ALJ finds persuasive the Petitioners' position that responsibility for electric service charges must continue to be governed by the Commission's approved tariffs, notwithstanding any possibly overlapping statutory language. The Petitioners further contend that a municipality cannot be treated as a utility customer for infrastructure it has neither accepted nor taken steps to own or control.[75]

53. The ALJ finds that any obligations arising under the Division of Authority Statute are distinct from, and do not override, the procedural and substantive requirements of Commission-approved tariffs. Compliance with tariff terms is prerequisite to lawful reassignment of service and associated charges.

54. Although the Commission lacks jurisdiction to enforce statutory duties imposed directly on CDOT or municipalities under the Transportation Code, it is authorized to interpret the interaction between such statutes and Commission-regulated tariffs where necessary to resolve matters within its jurisdiction. Treating the COL Tariff as "irrelevant" would effectively nullify the Commission's oversight of its own filed tariffs, an outcome inconsistent with the Commission's constitutional and statutory authority.

55. Upon careful review of the filings and record, the undersigned ALJ finds and concludes that while the Division of Authority Statute imposes a general legislative obligation on municipalities to provide street illumination, that obligation is separate from and does not displace the billing requirements set forth in Commission-regulated tariffs. Nothing in the statutory language or record suggests that the General Assembly intended to override the Commission's exclusive authority over tariff enforcement. Public Service remains bound by its approved tariffs when assigning responsibility for streetlighting service.

[75] *See* Petitioners' Reply Brief at pp. 8-10.

56. Based on the foregoing findings and conclusions, the ALJ will grant the Petition, in part, and deny the Company's request for a declaratory ruling that municipalities are responsible for paying electric charges for streetlighting on state and interstate highways, as ordered below.

VI. TRANSMISSION OF THE RECORD

57. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding and recommends that the Commission enter the following order.

VII. ORDER

The Commission Orders That:

1. Consistent with the discussion above, the Petition for Declaratory Order, filed on December 4, 2023, by the Colorado Communication and Utilities Alliance, the Town of Morrison, and the Cities of Arvada, Aurora, Centennial, Northglenn, and Wheat Ridge, is granted in part.

2. For the reasons discussed above:

   a. Billing responsibility for electric service to streetlighting infrastructure is governed by the express terms of Public Service Company of Colorado's ("Public Service") tariffs. Section 43-2-135(1), C.R.S. does not displace tariff procedures or authorize the assignment of payment responsibility outside the scope of tariffs approved by the Colorado Public Utilities Commission.

   b. Public Service may not reassign billing responsibility for streetlighting service from the Colorado Department of Transportation to a municipality unless all of the following conditions are met: (1) the streetlights qualify for transfer under the criteria set forth in Sheet No. 100C of Public Service Co. of Colo., Colo. P.U.C. Electric Tariff, Public Street and Highway Lighting Service, Customer-Owned Lighting Service, effective Jan. 1, 2017; 2) ownership of the streetlighting infrastructure is transferred to Public Service; and 3) the municipality submits a formal request for service under the Street Lighting Tariff, in accordance with applicable tariff provisions.

c. The Street Lighting Service Tariff, as partially set forth in Sheet No. 98B of Public Service Co. of Colo., Colo. P.U.C. Electric Tariff, Public Street and Highway Lighting Service, effective January 21, 2019, does not permit reassignment of billing responsibility between customers, or across tariff classifications, unless authorized through a formal tariff-based process or otherwise expressly approved by the Commission.

3. Public Service's request for a declaratory ruling that municipalities are responsible for paying electric bills for streetlighting on state and interstate highways within their jurisdictions is denied, consistent with the findings and conclusions above.

4. Proceeding No. 23D-0591E is closed.

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.

a. 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.

b. 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.

6. 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

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director