

Decision No. C14-1239-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0660E

IN THE MATTER OF ADVICE LETTER NO. 1672 - ELECTRIC OF PUBLIC SERVICE COMPANY OF COLORADO TO REVISE THE GENERAL RATE SCHEDULE ADJUSTMENT (GRSA) RIDER APPLICABLE TO ALL ELECTRIC BASE RATE SCHEDULES AND REVISE THE TRANSMISSION COST ADJUSTMENT (TCA) TO REMOVE COSTS THAT HAVE BEEN SHIFTED TO BASE RATES TO BECOME EFFECTIVE JULY 18, 2014.

PROCEEDING NO. 14A-0680E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS ARAPAHOE DECOMMISSIONING AND DISMANTLING PLAN.

**INTERIM DECISION TO NOT ACCEPT MOTION TO
RESTRUCTURE COMMISSIONERS' TOUR OF
COMANCHE 3 FACILITY AND VISIT TO PUEBLO**

Mailed Date: October 14, 2014

Adopted Date: October 8, 2014

I. BY THE COMMISSION

A. Statement

1. By Decision No. C14-1043-I issued August 28, 2014, the Commission ruled that, because Ms. Leslie Glustrom (Ms. Glustrom) failed to demonstrate a pecuniary or tangible interest not shared by other residential ratepayers, her motion for permissive intervention was

denied. The Commission also denied her request for rehearing, reargument, or reconsideration filed on September 17, 2014.¹

2. On October 2, 2014, the Commission issued a Notice of Activity that informed the public of a planned tour of Public Service Company of Colorado's (Public Service) Comanche 3 coal plant in Pueblo, Colorado, on Thursday, October 9, 2014. The Notice of Activity also disclosed a meeting the same day between the Commissioners and Action 22, which is a volunteer organization with a mission of effecting change on water, transportation, economic development, medical, and higher education issues for southern Colorado.²

3. The next day, Ms. Glustrom filed what she titled a "[Motion] to Restructure the Tour of Comanche 3 and Visit to Pueblo..." Because Ms. Glustrom is not a party, we do not accept her Motion as a formal filing in this proceeding. Instead, we construe Ms. Glustrom's filing as a public comment and address its issues.

B. Ms. Lustrum's Motion

4. Ms. Glustrom, as a Public Service electric customer, requests the Commission to restructure its planned visit to the Comanche 3 generation unit to avoid ex parte communications prohibited by Commission Rule 1106 of the Rules of Practice and Procedure, 4 Code of

¹ This request was denied at the Commissioners' Weekly Meeting, October 1, 2014. As of the date of the October 8, 2014, Commissioners' Weekly Meeting, the order denying Ms. Glustrom's request for reconsideration had not been issued yet.

² Action 22's website identifies itself as follows: "Action 22 is a volunteer-driven membership organization of individuals, cities, communities, counties, associations, businesses and organizations in a 22-county region, banding together for a stronger voice on statewide discussion tables, the State Legislature and in Washington, D.C. Action 22's mission is to give voice to Southern Colorado and serve as a leader for cohesive action to affect change and shape the future of Southern Colorado." The website lists Action 22's major issues as: "Continue efforts at the statewide table to resolve water issues; Pursue efforts to improve transportation infrastructure including major highways and air service; Build resources and relationships to enhance economic development to Southern Colorado; Work to address cost, access and availability of medical services; Pursue an aggressive program to enhance institutions of higher education and their partnership with economic development agencies; [and,] Become Colorado's most effective advocacy organization by engaging legislators, other local elected offices, state agencies, membership, etc., to affect public policy for the future of Southern Colorado." See <http://www.action22.org/about-action-22>.

Colorado Regulations 723-1. Ms. Glustrom states that she is a strong proponent of the Commission learning more about the coal plants owned and operated by Public Service, and of the Commission spending time in the Pueblo community; but, she believes the tour would result in discussions among officials from Public Service and the Commissioners about issues pending in this proceeding, such as Public Service's expenditures on Comanche 3 and proposed rate increases. Ms. Glustrom's Motion also stated that, because the Commission is hearing an application for a rate increase from Black Hills/Colorado Electric Utility Company, LP (Black Hills),³ "the meeting with [Action] 22 in Pueblo could also violate the ex parte prohibitions in Rule 1106." (Emphasis in original) Motion at ¶ 6.

C. Discussion, Findings, and Conclusions

5. Because Ms. Glustrom is not a party to this proceeding, we do not accept her filing as a formal motion. Under Rule 1509, the Commission may accept comments from the public in any proceeding, and we construe her non-party filing as a public comment and address its issues.

6. Rule 1106 describes prohibited communications and states:

Ex parte *communications concerning any disputed substantive or procedural issue, or facts or allegations at issue*, are strictly prohibited. Commission staff members shall not act as conduits of communication in a manner that would violate this rule if the communication had occurred directly. Prohibited communication includes any oral or written communication that:

- (a) occurs during the pendency of an adjudicatory proceeding or occurs when the persons engaging in the communication know or reasonably should know that the adjudication will commence within 30 days;
- (b) occurs between any advisory staff, Commissioner, or Administrative Law Judge, on the one hand, and, on the other hand, any person, including trial staff, related to, acting as, or acting on behalf of a party, amicus curiae, or member of the public submitting comments pursuant to rule 1509 and

³ Proceeding No. 14AL-0393E.

- (c) is made without providing other parties notice and an opportunity to respond.

(Emphasis added).

7. The tour of Comanche 3 and the visit to Pueblo do not implicate prohibited communications under the Commission's *ex parte* rules, for two reasons. First, the Commission's Notice of Activity informed the public of the Comanche 3 tour and the meeting with Action 22. Both the tour and the Action 22 meeting are open to the public, and any party to the proceedings or other person may attend and therefore observe and hear the same things as the Commissioners. Second, the tour and visit are for general education purposes and are not to discuss disputed substantive or procedural issues pending before the Commission in any proceeding. Contrary to Ms. Glustrom's contentions, communications about disputed issues are not an unavoidable result of the tour or meeting. The Commissioners will not entertain any discussions of a pending proceeding, such as the Public Service or Black Hills rate cases, during their tour of Comanche 3 or the meeting with Action 22. The Commissioners are cognizant of the matters before it, aware of their obligations under Commission rules, and are able to preclude discussions of substantive or procedural issues in dispute.

II. ORDER

A. It Is Ordered That:

1. The Motion to Restructure the Tour of Comanche 3 and Visit Pueblo (Motion), filed by Ms. Leslie Glustrom on October 3, 2014, is not accepted, but is construed as a public comment. We have considered the issues addressed in her Motion and conclude that the Commissioners' tour of Public Service Company of Colorado's Comanche 3 facility and the meeting with Action 22 should not be restructured, consistent with the discussion above.

2. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 8, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners