

Decision No. R14-0994-I

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

PROCEEDING NO. 14F-0336EG

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DEVELOPMENT RECOVERY COMPANY LLC ON BEHALF OF THE RYLAND GROUP,  
  
COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,  
  
RESPONDENT.

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PROCEEDING NO. 14F-0404EG

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DEVELOPMENT RECOVERY COMPANY LLC ON BEHALF OF THE RICHMOND  
AMERICAN HOMES OF COLORADO, INC.,  
  
COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,  
  
RESPONDENT.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
ROBERT I. GARVEY  
GRANTING MOTION TO CONSOLIDATE  
PROCEEDINGS; GRANTING IN PART  
AND DENYING IN PART MOTION TO DISMISS  
AND MOTION FOR A MORE DEFINITE STATEMENT;  
AND ADOPTING PROCEDURAL SCHEDULE**

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Mailed Date: August 15, 2014

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### **I. STATEMENT**

1. On April 14, 2014, Development Recovery Company LLC (DRC) on behalf of the Ryland Group (Ryland) filed a Complaint against Public Service Company of Colorado (Public Service). This filing commenced Proceeding No. 14F-0336EG.

2. On April 18, 2014, the Public Utilities Commission (PUC or Commission) issued an Order to Satisfy and Answer in Proceeding No. 14F-0336EG.

3. On April 23, 2017, by Minute Order, the Commission referred Proceeding No. 14F-0336EG to an Administrative Law Judge (ALJ).

4. On April 24, 2014, DRC on behalf of Richmond American Homes of Colorado, Inc. (Richmond) filed a Complaint against Public Service. This filing commenced Proceeding No. 14F-0404EG

5. On May 2, 2014, Public Service filed its Motion to Dismiss or in the Alternative Motion for More Definite Statement (Motion to Dismiss I) in Proceeding No. 14F-0336EG.

6. On May 14, 2014, DRC filed its Response to Public Service Company of Colorado's Motion to Dismiss or in the Alternative Motion for More Definite Statement (Response I).

7. On May 16, 2014, Public Service filed its Motion for Leave to File a Reply and Reply to Development Recovery Company's Response to Motion to Dismiss (Reply I).

8. On May 22, 2014, DRC filed its Response to Public Service's Motion for Leave to File a Reply and Reply to Development Recovery Company's Response to Motion to Dismiss.

9. On May 22, 2014, the PUC issued an Order to Satisfy and Answer in Proceeding No. 14F-0404EG.

10. On May 28, 2014, by Minute Order, the Commission referred Proceeding No. 14F-0404EG to an ALJ.

11. By Interim Decision No. R14-0591-I, issued June 3, 2014, the Motion to Dismiss in Proceeding No. 14F-0336EG was granted in part and denied in part and a prehearing conference was scheduled for July 14, 2014.

12. On June 5, 2014, Public Service filed its Motion for More Definite Statement and Motion to Dismiss Fourth Claim for Relief (Motion to Dismiss II) in Proceeding No. 14F-0404EG.

13. On June 11, 2014, Public Service filed its Answer to the Formal Complaint in Proceeding No. 14F-0404EG.

14. On June 17, 2014, Public Service filed its Answer to the Formal Complaint in Proceeding No. 14F-0336EG.

15. On June 19, 2014, DRC filed its Response (Response II) to Public Service's Motion to Dismiss II in Proceeding No. 14F-0404EG.

16. By Interim Decision No. R14-0817-I, issued July 14, 2014, the procedural schedule for Proceeding No. 14F-0336EG agreed to by the parties at the prehearing conference held on July 14, 2014, was adopted.

17. On July 18, 2014, Public Service filed its Motion to Consolidate Formal Complaint Proceedings of Development Recovery LLC Against Public Service Company of Colorado (Motion to Consolidate) in both Proceeding No. 14F-0336EG and Proceeding No. 14F-0404EG.

18. On July 31, 2014, DRC filed its Response to Public Service Company of Colorado Motion to Consolidate Formal Complaint Proceedings of Development Recovery Company LLC (Response to Consolidation).

## **II. MOTION TO CONSOLIDATE**

19. As grounds for the Motion to Consolidate, Public Service states that DRC although representing two different developers, makes the same challenge to Public Service's gas main and electric line extension policies. Further, the Complaints filed in the proceedings are similar, the relief requested is identical, and discovery issued by DRC is also similar.

20. Public Service further states that consolidation would ensure consistency in decisions, reduce duplicative work for the parties and the Commission, and would not be prejudicial to any party.

21. In their Response to Consolidation, DRC acknowledges that the issues in Proceeding No. 14F-0336EG and Proceeding No. 14F-0404EG are similar, but argue that consolidation would prejudice the rights of the parties.

22. DRC argues that Ryland and Richmond are both residential real estate developers and consolidation may allow the introduction of information which is confidential to each party, increase the potential for inconsistent settlement positions, and of claims of anti-competitive behavior.

23. Further, DRC argues that since there has not been a ruling issued on the Motion to Dismiss II filed in Proceeding No. 14F-0404EG, the proceedings are not currently aligned procedurally.

24. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1402 of the Commission's Rules of Practice and Procedure governs consolidation. As pertinent here, the Rule provides that the "Commission may consolidate proceedings where the issues are substantially similar and the rights of the parties will not be prejudiced." Whether to grant consolidation is within the Commission's discretion.

25. The ALJ finds that consolidation of the above captioned proceedings would minimize or eliminate the risk of inconsistent decisions, as well as serve administrative efficiency and economy and would minimize the need for parties to submit duplicative evidence.

26. In considering administrative efficiency, the ALJ finds that consolidation of Proceeding No. 14F-0336EG with Proceeding No. 14F-0404EG is appropriate pursuant to Rule 4 CCR 723-1-1402. It is found that the issues in these two proceedings are substantially similar, and the rights of the parties will not be prejudiced.

27. The potential prejudice argued by DRC is only speculative and under the circumstances, the benefit of administrative efficiency, the conservation of resources of the Commission and the parties to these proceedings, and the elimination of the risk of inconsistent decisions outweighs any purely speculative prejudice.

28. The two proceedings will be consolidated for all purposes. The Parties will be ordered to comply with the service and filing requirements set out below and in the Ordering Paragraphs of this Decision.

29. The procedural schedule adopted in Interim Decision No. R14-0817-I, issued July 14, 2014 for Proceeding No. 14F-0336EG is now applicable to Proceeding No. 14F-0404EG for all purposes.

**III. MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO DISMISS FOURTH CLAIM FOR RELIEF**

30. As discussed in DRC's Response to Consolidation, the Motion to Dismiss II filed by Public Service on June 5, 2014 in Proceeding No. 14F-0404EG has not been ruled on as of the date of this Decision.

31. In order to have the proceedings at the same procedural juncture, the undersigned ALJ shall rule on the Motion to Dismiss II.

32. In Interim Decision No. R14-0591-I, issued June 3, 2014 in Proceeding No. 14F-0336EG, the undersigned ALJ granted a similar motion to dismiss a claim for relief and also denied a similar motion for a definite statement similar to those filed in Motion to Dismiss II.

33. Based upon the findings in Interim Decision No. R14-0591-I, the Motion to Dismiss the Fourth Claim of Relief shall be granted and the Motion for a More Definitive Statement shall be denied.

34. This Decision shall place Proceeding No. 14F-0336EG and Proceeding No. 14F-0404EG on equal footing at this stage of the consolidated proceeding.

**IV. PROCEDURAL SCHEDULE**

35. By Interim Decision No. R14-0817-I, issued July 14, 2014, a procedural schedule was adopted by the parties in Proceeding No. 14F-0336EG.

36. With the consolidation of Proceeding No. 14F-0336EG and Proceeding No. 14F-0404EG, the undersigned ALJ is aware that this may not provide the parties sufficient time to meet deadlines for prefiled testimony and exhibits and fully prepare for the evidentiary hearing currently scheduled for November 17, 2014.

37. If either party feels that the current procedural schedule will not provide sufficient time to prepare for the hearing, they are ordered to consult with the opposing party and submit a joint motion for a revised procedural schedule. If the parties are unable to agree upon a revised procedural schedule, or one party does not wish to revise the procedural schedule, the party that desires a revised procedural schedule, is ordered to file a motion to continue the procedural schedule and request a prehearing conference.

38. Any motion, filed by one party, to continue the procedural schedule shall be filed on or before September 2, 2014.<sup>1</sup>

**V. ORDER****A. It Is Ordered That:**

1. The Motion to Consolidate Formal Complaint Proceedings of Development Recovery LLC Against Public Service Company of Colorado filed by Public Service Company of Colorado on July 18, 2014 is granted

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<sup>1</sup> The date a Complainant's Direct Testimony is due to be filed. A joint motion to continue the procedural schedule will be considered after September 2, 2014.

2. Proceeding Nos. 14F-0336EG and 14F-0404EG are consolidated. **Proceeding No. 14F-0336EG is the primary (or lead) proceeding.**

3. All proceeding numbers and captions in the consolidated proceeding shall be listed on all future filings, as shown above in this Decision. The primary or lead proceeding identified in Ordering Paragraph No. 2, and its caption, shall appear first.

4. Given the consolidation, documents shall be filed in Proceeding No. 14F-0336EG; and no document shall be filed in Proceeding No. 14F-0404EG.

5. The Motion for More Definite Statement and Motion to Dismiss Fourth Claim for Relief filed by Public Service Company of Colorado on June 5, 2014 in Proceeding No. 14F-0404EG, is granted in part and denied in part.

6. Public Service Company of Colorado's Motion for More Definite Statement as to claims one, two, three, five, and six is denied.

7. Public Service Company of Colorado's Motion to Dismiss as to claim four is granted.

8. The procedural schedule adopted on July 14, 2014 in Proceeding No. 14F-0336EG by Decision No. R14-0817-I is adopted in the consolidated proceeding.

9. Any motion to continue or revise the procedural schedule filed by one party, must be filed on or before close of business on September 2, 2014.

10. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ROBERT I. GARVEY

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director