

Decision No. R14-1139-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0818E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING EXPENSES INCURRED FOR THE PERIOD JANUARY 2013 THROUGH DECEMBER 2013 THAT ARE RECOVERED THROUGH THE ELECTRIC COMMODITY ADJUSTMENT CLAUSE AND APPROVING THE CALCULATION OF 2013 SHORT TERM SALES MARGINS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
SCHEDULING PREHEARING CONFERENCE,
DENYING INTERVENTION, EXTENDING
TIME FOR COMMISSION DECISION, AND
VACATING PROCEDURAL SCHEDULE**

Mailed Date: September 17, 2014

I. STATEMENT

1. On August 1, 2014, Public Service Company of Colorado (Public Service or Applicant), filed a Verified Application that seeks Commission approval of the 2013 fuel, purchased energy, and purchased wheeling costs that Public Service collected through the Electric Commodity Adjustment (ECA) clause. That filing commenced this proceeding.

2. On August 4, 2014, the Commission issued its Notice of Application Filed (Notice). That Notice established an intervention period, which expired on September 3, 2014. In addition, the Notice contained a *pro forma* procedural schedule. This Decision will vacate that procedural schedule.

3. On September 2, 2014, Ms. Leslie Glustrom filed her Motion to Intervene.

4. On September 3, 2014, the Colorado Office of Consumer Counsel (OCC) filed its Notice of Intervention of Right, Entry of Appearance, and Request for Hearing. The OCC is an intervenor as of right and a party in this proceeding. The OCC believes that a hearing will be necessary in order to determine if the approval of Public Service's ECA is just and reasonable and in the public interest.

5. On September 10, 2014, by minute order, the Commission referred this matter to an Administrative Law Judge (ALJ).

6. On September 12, 2014, Public Service filed its Objection to Motion to Intervene of Leslie Glustrom.

A. Time for Commission Decision.

7. On September 10, 2014, the Commission deemed the Application complete.

8. When it filed the Application, Public Service filed its direct testimony and exhibits in support of the Application. Absent an Order enlarging the time for Commission decision, § 40-6-109.5(1), C.R.S., provides that the Commission decision in this matter should issue within 120 days of the date on which the Application is deemed complete.

9. The ALJ finds that additional time for Commission decision is required in this matter. Accordingly and pursuant to § 40-6-109.5(1), C.R.S., the ALJ will extend the time for Commission decision in this matter an additional 90 days. Thus, absent a further enlargement of time by the Commission¹ or Applicant's waiver of § 40-6-109.5, C.R.S., a Commission decision on the Application should issue on or before April 9, 2015.

¹ Section 40-6-109.5(4), C.R.S., allows the Commission to extend the time for decision an additional 90 days upon a finding of extraordinary circumstances.

B. Glustrom Intervention

10. Rule 1401(c), 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure allows for permissive intervention subject to a demonstration that the proceeding may substantially affect the pecuniary and tangible interests of the movant. The motion must also show that the movant's interests would not otherwise be adequately represented in the proceeding. Rule 1401(c), 4 CCR 723-1, states in part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.

11. The requirement in Rule 1401(c) requiring persons or entities seeking permissive intervention in a proceeding to represent that their interests "would not otherwise be adequately represented" is similar to Colorado Rule of Civil Procedure 24(a), which provides that even if a party seeking intervention in a case has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties. *See Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass'n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case's judgment. *See Denver Chapter of the Colo. Motel Ass'n v. City & County of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city). The test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative. The presumption of adequate representation can be overcome by evidence of

bad faith, collusion, or negligence on the part of the representative. *Id.*; *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

12. Further, Rule 1401(c), 4 CCR 723-1, requires that a movant who is a “residential consumer, agricultural consumer, or small business consumer” must discuss in the motion whether the distinct interest of the consumer is either not adequately represented by the OCC or inconsistent with other classes of consumers represented by the OCC. As set forth in §§ 40-6.5-104(1) and (2), C.R.S., the OCC has a statutory mandate to represent the interests of residential ratepayers. The Colorado Supreme Court expressly stated that “if there is a party charged by law with representing his interest, then a compelling showing should be required to demonstrate why this representation is not adequate.” *Feigen v. Alexa Group, Ltd.*, 19 P.3d 23, 26 (Colo. 2001).

13. Ms. Leslie Glustrom, a residential electric customer, filed a Motion to Intervene in Proceeding No. 14AL-0818E as *pro se*. Ms. Glustrom states that she has “followed coal cost and supply issues closely since 2004 and she has an extensive record of data, analyses and discovery responses that relate to past, present and future coal costs and coal supply.” *Glustrom Motion to Intervene p.9*. She further argues that no other party, including the OCC, will be able to adequately represent her interests. Furthermore, Ms. Glustrom explains that she is a customer of Public Service and that her utility bill causes her household’s budget to be a matter of serious financial concern.

14. Public Service recommends that the Commission deny her intervention because she has not demonstrated this case may substantially affect her pecuniary or tangible interests or that her interest would not otherwise be represented adequately by other parties.

15. The OCC in its Notice of Intervention lists, among its concerns, the reasonableness of coal obtained through long-term contracts rather than coal obtained through spot markets and the apparent failure to use Powder River Basin (PRB) coal or a blend of PRB coal with Colorado coal for some power plants.

16. Ms. Glustrom fails to demonstrate pecuniary or tangible interests not shared by other residential ratepayers. She has failed to show that other parties in this proceeding cannot represent her interests in this matter. While Ms. Glustrom indicates past divergence from positions taken by the OCC, these examples fail to demonstrate how her interests would differ from other similarly situated residential customers in this proceeding. In addition, Ms. Glustrom fails to show why the OCC's representation is not adequate for purposes of this proceeding. A difference in litigation strategy is not sufficient to show that representation by the OCC is not adequate.

C. Prehearing Conference

17. A prehearing conference is necessary to discuss the matters identified below and to establish a procedural schedule and hearing dates in this matter. The ALJ will schedule a prehearing conference in this matter for October 2, 2014.

18. *At the prehearing conference*, the Parties must be prepared to discuss: (a) the date by which the Intervenor will file its answer testimony and exhibits; (b) the date by which Applicant will file its rebuttal testimony and exhibits; (c) the date by which each party will file its corrected testimony and exhibits; (d) the date by which each party will file its prehearing motions;² (e) whether a final prehearing conference is necessary and, if it is, the date for that

² This date must be at least seven days before the final prehearing conference or, if there is no final prehearing conference, must be at least ten days before commencement of the hearing.

prehearing conference; (f) the date by which the Parties will file any stipulation or settlement reached;³ (g) dates for the evidentiary hearing; and (h) the date by which each party will file its post-hearing statement of position, to which no response will be permitted.

19. In considering hearing dates, the Parties are reminded that, absent a further enlargement of time or waiver of § 40-6-109.5, C.R.S., the Commission decision in this matter should issue on or before April 9, 2015. To allow time for statements of position, a recommended decision, exceptions, responses to exceptions, and a Commission decision on exceptions, the hearing in this matter must be *concluded* no later than the week of January 5, 2015.

20. *At the prehearing conference*, the Parties must be prepared to discuss any matter pertaining to discovery if the procedures and timeframes contained in Rule 4 CCR 723-1-1405 are not sufficient.

21. *At the prehearing conference*, the Parties must be prepared to discuss service of filings and of discovery requests and responses.

22. *At the prehearing conference*, the Parties must be prepared to discuss any matter pertaining to the treatment of information claimed to be confidential if the procedures and timeframes contained in Rule 4 CCR 723-1-1100 are not adequate. This discussion will include the treatment of information for which extraordinary protection may be sought.

23. *At the prehearing conference*, a party may raise any additional issue.

24. The ALJ expects the Parties to come to the prehearing conference with proposed dates for the procedural schedule and evidentiary hearing. The Parties must consult prior to the prehearing conference with respect to the matters to be discussed at the prehearing conference.

³ This date must be at least five business days before the first day of hearing.

The ALJ encourages the Parties to present, if possible, a procedural schedule and hearing dates that are satisfactory to all Parties.

25. The Parties are advised, and are on notice, that failure to attend or to participate in the prehearing conference will be deemed a waiver of objection to the decisions made, the procedural schedule established, and the hearing dates established at the prehearing conference.

II. ORDER

A. It Is Ordered That:

1. Pursuant to § 40-6-109.5(1), C.R.S., the time for Commission decision in this matter is extended to and including April 9, 2015.

2. The Motion to Intervene filed by Ms. Leslie Glustrom on September 2, 2014, in Proceeding No. 14AL-0818E is denied, consistent with the discussion above.

3. The procedural schedule established in the Notice of Application Filed dated August 4, 2014 is vacated.

4. A prehearing conference in this matter is scheduled as follows:

DATE: October 2, 2014
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

5. The matters identified above will be discussed at the prehearing conference. Those attending the prehearing conference must be prepared to discuss the matters identified above and must have authority to agree to a procedural schedule and evidentiary hearing dates.

6. Failure to attend or to participate in the prehearing conference shall be deemed a waiver of objection to the decisions made, the procedural schedule established, and the hearing dates established at the prehearing conference.

7. The Parties shall be held to the advisements in this Decision.

8. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director