

Decision No. R19-0624-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19F-0315E

ANNE PACE, ET AL.,

COMPLAINANTS,

V.

SAN LUIS VALLEY RURAL ELECTRIC COOPERATIVE, INC.,

RESPONDENT.

PROCEEDING NO. 19F-0351E

TOWN OF CRESTONE,

COMPLAINANT,

V.

SAN LUIS VALLEY RURAL ELECTRIC COOPERATIVE, INC.,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
CONSOLIDATING PROCEEDINGS, VACATING
HEARING, SCHEDULING PREHEARING
CONFERENCE, AND DENYING REQUEST FOR
ORDER PROHIBITING SERVICE DISCONTINUATION**

Mailed Date: July 24, 2019

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I. STATEMENT

A. Summary.

1. This Decision consolidates the above-referenced proceedings, vacates the September 3, 2019 hearing scheduled in Proceeding No. 19F-0351E and schedules an in-person prehearing conference in Crestone, Colorado in order to facilitate the forward movement of this consolidated proceeding. The Decision also denies the Town of Crestone’s (Town) request for an order prohibiting San Luis Valley Rural Electric Cooperative, Inc. (San Luis Valley), from discontinuing service while this matter is pending based on the current record. In addition, the Decision corrects the caption in this matter to reflect San Luis Valley’s accurate legal name (San Luis Valley Rural Electric Cooperative, Inc.), and provides additional advisements to the parties.

II. BACKGROUND, FINDINGS, AND CONCLUSIONS

A. Consolidation.

2. On June 4, 2019, Complainants Anne Pace *et al.* initiated Proceeding No. 19F-0315E by filing a Complaint against San Luis Valley with the Public Utilities Commission (first case or first Complaint). San Luis Valley answered that Complaint on June 26, 2019. On June 20, 2019, the Town filed its Complaint against San Luis Valley, thereby initiating Proceeding No. 19F-0351E (second case or second Complaint). San Luis Valley answered the Town's Complaint on July 12, 2019. The Commission referred both matters to an Administrative Law Judge (ALJ) for disposition. The undersigned ALJ has been assigned both cases.

3. The Complaints and Answers in the referenced proceedings raise substantially similar issues, and involve overlapping parties. In particular, both Complaints name the same Respondent, San Luis Valley and involve residents of Crestone. Both Complaints point to San Luis Valley's recent rate restructure as the catalyst for the Complaints. *See* Complaint at ¶3, (Proceeding No. 19F-0315E); Complaint at 1 (Proceeding No. 19F-0351E). Both Complaints argue that San Luis Valley's recent rate restructure is unjust and unreasonable, and question whether San Luis Valley provided ratepayers with appropriate notice of the change. *Id.* Both Complaints allege Commission jurisdiction under § 40-9.5-106(3), C.R.S. *Id.* San Luis Valley's Answers to the Complaints highlight these overlapping issues. *See e.g.*, ¶ 3, Answer (Proceeding No. 19F-0315E) and ¶ 3, Answer (Proceeding No. 19F-0351E).

4. Given the substantial overlap in the issues and parties, the ALJ finds that consolidating these proceedings will promote administrative efficiency. The ALJ finds that no parties' rights will be prejudiced by consolidating the proceedings. Consequently, the ALJ will

consolidate the proceedings, as permitted by Rule 1402 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

B. Hearings.

5. Consistent with Commission rules, when the Commission Director served San Luis Valley with the Complaint and Order to Show Cause in the second case, the Director scheduled a hearing for September 3, 2019. See Rule 1302(g), 4 CCR 723-1. As explained below, the ALJ finds that the circumstances require a prehearing conference before proceeding to an evidentiary hearing in this matter. The ALJ will vacate the September 3, 2019 hearing, and schedule a prehearing conference for August 27, 2019 at 9:00 a.m. Given the large volume of unrepresented parties to this proceeding located in Crestone, the parties and counsel will be required to appear in person at the prehearing conference, which will be held near Crestone, Colorado.¹

6. At the prehearing conference, the ALJ will set a schedule for the parties to disclose witnesses and exhibits, will set any other appropriate deadlines, will schedule an evidentiary hearing to take place at or near Crestone, Colorado as soon as possible, and will address procedural or other practical issues concerning the evidentiary hearing in this matter. Any party may raise other issues relevant to this proceeding at the prehearing conference, including any agreements impacting this proceeding.

7. The primary purpose of the prehearing conference is to ensure the consolidated proceeding is adjudicated to a full and final resolution in a timely, orderly, and efficient manner, consistent with due process requirements. The parties are largely free to present their cases how

¹ Parties represented by an attorney are not required to appear in person as counsel may do so on the parties' behalf.

they deem fit. Nonetheless, the large volume of individuals who are representing themselves in this consolidated proceeding creates potential challenges to completing an evidentiary hearing in an orderly and efficient manner. For example, if each Complainant wishes to present their own evidence, the hearing may require a considerable amount of time to complete and may present other practical issues that should be addressed in advance. At the prehearing conference, the ALJ will address these types of issues, so the parties should be appropriately prepared.

8. At the prehearing conference, the parties must be prepared to discuss the amount of time each of them needs to present their case at the evidentiary hearing, and available dates for an evidentiary hearing. As such, the parties should ensure they are aware of their witnesses' availability for an evidentiary hearing.

9. The ALJ encourages the parties to confer with each other in advance on all matters to be addressed at the prehearing conference.

10. To facilitate the parties' preparation for the prehearing conference, the parties are on notice that the ALJ anticipates holding an evidentiary hearing on the merits of the Complaints at or near Crestone, Colorado sometime between September 30, 2019 and October 31, 2019.

C. Town's Request for Order Prohibiting San Luis Valley from Discontinuing Service.

11. The Town's Complaint requests an "injunction" preventing San Luis Valley from discontinuing service to Town residents, businesses, and nonprofits "due to nonpayment or underpayment" while this matter is pending. Complaint at ¶ 3(E), (Proceeding No. 19F-0351E). The ALJ construes this a request for an interim decision prohibiting discontinuation of service.

12. The Commission's authority to prohibit discontinuation of service pending resolution of a complaint arises under Rule 1302(f) of its Rules of Practice and Procedure,

4 CCR 723-1. Under that Rule, the Commission may enter such an order when it finds good cause to do so, or when other grounds identified in the rule are met. Rule 1302(f)(III), 4 CCR 723-1. The Town's Complaint simply asks for an order prohibiting service discontinuation, but fails to establish grounds for the Commission to enter such an order. For example, the Town's Complaint does not indicate whether discontinuation is imminent, pending, or has been threatened. Thus, it is not clear whether an interim decision prohibiting discontinuation is necessary. Likewise, the Town's Complaint does not raise Rule 1302(f)'s other grounds for a decision prohibiting discontinuation of service, such as whether the Town posted a bond or deposit equal to the amount in dispute or whether the Town has previously made an informal complaint to the Commission resulting in a Commission investigation concluding probable customer success on the Complaint. Rule 1302(f)(I) and (II), 4 CCR 723-1.

13. The ALJ concludes that the Town's Complaint fails to establish good cause or other grounds for a decision prohibiting San Luis Valley from discontinuing service. Based on the information currently in the record, the ALJ will deny the request for an order prohibiting San Luis Valley from discontinuing service. This does not prevent any of the Complainants from making another similar request that provides the necessary information.

D. Advisements.

14. *Complainants are advised and on notice that failure to appear at the prehearing conference may result in dismissal of their Complaints for failing to pursue or prosecute it.*

15. *All parties are advised and on notice that failure to appear at the prehearing conference may result in a decision contrary to their interests, and that the ALJ will deem any*

party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

16. *The parties are advised and on notice* that the Commission's Rules of Practice and Procedure, 4 CCR 723-1 apply to this adjudicatory proceeding, which they may obtain from the Commission in hard copy or on the Commission's website at:

<https://www.colorado.gov/pacific/dora/pucrulespractice>.

17. *The Complainants are advised and on notice* that they carry the burden of proof by a preponderance of the evidence in this matter, as the parties seeking relief from the Commission. § 24-4-105(7), C.R.S.; Rule 1500, 4 CCR 723-1. The preponderance standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Dep't of Revenue*, 717 p.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, tips in favor of that party. *Schocke v. State, Dep't of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

III. ORDER

A. It Is Ordered That:

1. Proceeding Nos. 19F-0315E and 19F-0351E are consolidated. Proceeding No. 19F-0315E will serve as the primary proceeding.

2. The hearing set by the Commission Director for September 3, 2019 at 9:00 a.m. is vacated.

3. Consistent with the discussion in this Decision, an in person prehearing conference in this matter is scheduled as follows:

DATE: August 27, 2019
TIME: 9:00 a.m.
PLACE: Colorado College, Baca Campus
1 Baca Campus Road
Conference Room A
Moffat, Colorado 81143

4. Consistent with the discussion in this Decision, the Town of Crestone's request for an interim decision prohibiting San Luis Valley Electric Cooperative Association, Inc., from discontinuing service while this matter is pending is denied without prejudice.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director