

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19AL-0309G

IN THE MATTER OF ADVICE LETTER NO. 949-GAS FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REQUEST APPROVAL TO ELIMINATE THE CURRENTLY EFFECTIVE 24.19 PERCENT GENERAL RATE SCHEDULE ADJUSTMENT (“GRSA”) AND PLACE INTO EFFECT REVISED BASE RATES FOR ALL GAS RATE SCHEDULES THAT WILL REPLACE AND SUPERSEDE THE CURRENTLY EFFECTIVE BASE RATES TO BECOME EFFECTIVE JULY 1, 2019.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
ESTABLISHING PROCEDURAL SCHEDULE;
CONFIRMING RULINGS AT THE PREHEARING
CONFERENCE; SETTING HEARING
DATES; AND NOTICE OF HEARING**

Mailed Date: August 2, 2019

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I. STATEMENT**A. Procedural History.**

1. On May 31, 2019, Public Service Company of Colorado (Public Service) filed with the Colorado Public Utilities Commission (Commission), Advice Letter No. 949-Gas, accompanying tariff sheets, and supporting testimony and attachments. The proposed effective date on the filed tariffs was July 1, 2019. Public Service also requested that the Commission set a hearing on the proposed rates and tariff changes and thereby suspend the effective date of the proposed tariffs. This filing commenced Public Service's 2019 Phase II gas rate case.

2. By Decision No. C19-0541 (mailed on June 20, 2019), pursuant to § 40-6-111(1), C.R.S. (2019), the Commission set for hearing the tariffs filed with Advice Letter No. 949-Gas and thereby suspended their effective date for 120 days from the proposed effective date, or until October 29, 2019. The Decision also referred the matter to an Administrative Law Judge (ALJ) to set hearing dates, to rule on interventions, and to establish other procedures by separate decisions. Subsequently, the undersigned ALJ was assigned to preside over this Proceeding.

3. Pursuant to § 40-6-111(1)(b), C.R.S. (2019), Decision No. R19-0622-I (mailed on July 22, 2019), the ALJ suspended the effective date of the tariff sheets filed with Advice Letter No. 949-Gas for an additional 130 days, or a total of 250 days until March 7, 2020.

4. The procedural history of this Proceeding is set forth in Decisions previously issued herein and is repeated here as necessary to put this Decision into context.

5. Decision No. R19-0622-I acknowledged the interventions as of right filed by the Colorado Office of Consumer Counsel (OCC) on July 1, 2019, and filed by Trial Staff of the Colorado Public Utilities Commission (Staff) on July 9, 2019. Decision No. R19-0622-I also granted the Motion to Intervene, as a permissive intervenor, filed by Energy Outreach Colorado

(EOC) on July 5, 2019. Finally, Decision No. R19-0622-I scheduled a prehearing conference in this Proceeding for August 1, 2019 at 1:30 p.m.

6. Decision No. R19-0628-I (mailed on July 24, 2019) established procedures for the presentation of exhibits entered electronically during the evidentiary hearing, as well as the identification and marking of confidential information in hearing exhibits. The Decision established deadlines for Public Service to file, no later than August 7, 2019, the hearing exhibits (already pre-filed) that it intends to offer into evidence, pre-marked for identification in accordance with the procedures ordered in Decision No. R19-0628-I, and for all Parties to file final versions of all electronic Hearing Exhibits three business days prior to the first day of the hearing, or no later than November 8, 2019.¹

7. On July 25, 2019, Public Service filed a Response to the motions to intervene filed by Atmos Energy Corporation (Atmos), WoodRiver Energy, LLC (WoodRiver), Colorado Natural Gas, Inc. (CNG), Tiger Natural Gas, Inc. (Tiger), Climax Molybdenum Company (Climax), and Black Hills Colorado Gas, Inc. (Black Hills). Public Service stated that it did not oppose the permissive interventions of these Intervenors.²

8. Decision No. R19-0636-I (mailed on July 26, 2019) granted the motions for permissive intervention filed by Atmos on July 11, 2019; by WoodRiver on July 16, 2019; by Black Hills on July 18, 2019; by CNG on July 19, 2019; by Tiger on July 19, 2019; and by Climax on July 19, 2019. The Parties to this Proceeding are Public Service, OCC, Staff, EOC, Atmos, WoodRiver, Black Hills, CNG, Tiger, and Climax.

¹ In this Proceeding, the hearing will commence on November 14, 2019. Monday, November 11, 2019, is the Veterans Day holiday. Thus, three business days prior to the first day of the hearing is Friday, November 8, 2019. *See* § 40-6-121, C.R.S. After the Prehearing Conference, the ALJ reviewed his calendar and determined that the correct due date for this filing is November 8, 2019.

² Public Service Response to Motions to Intervene, at page 2.

9. On May 31, 2019, Public Service also filed a Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Customer Information (Motion for Protective Order). Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, allows parties 14 days to respond to motions, but when Decision No. R19-0622-I was issued on July 22, 2019, no responses had been filed to the Motion for Protective Order. Therefore, Decision No. R19-0622-I extended the due date for filing responses to the Motion for Protective Order to no later than 5:00 p.m. on July 26, 2019.

10. No responses to the Motion for Protective Order were filed by the extended deadline. Pursuant to Rule 1400(d) of the Rules of Practice and Procedure, 4 CCR 723-1, the ALJ found, in Decision No. R19-0652-I (mailed on July 31, 2019), that the failure of the Parties and authorized interested persons to file responses to the Motion for Protective Order constituted a confession of the motion, and that the Motion for Protective Order was not opposed. Decision No. R19-0652-I granted the Motion for Protective Order.

11. On July 29, 2019, Public Service filed its Filing of Procedural Schedule and Provisions of Discovery and Confidential Information Pursuant to Decision No. R19-0622-I, which *inter alia* proposed a consensus procedural schedule and hearing dates, as well as agreements on modified procedures for discovery and confidential information. Public Service stated that it had conferred with all the Parties, who authorized Public Service to state that they supported the proposed procedural schedule, hearing dates, and provisions for discovery and confidential information.³

³ Filing of Procedural Schedule, at pages 1 and 3.

B. Prehearing Conference, Procedural Schedule, and Evidentiary Hearing Dates.

12. The Prehearing Conference was called to order as scheduled on August 1, 2019.

All Parties appeared by counsel.

13. At the prehearing conference, the ALJ made oral clarifications and rulings on the procedural schedule, discovery, timing of a settlement hearing, and other procedural matters.

This Decision memorializes those rulings and clarifications.

1. Procedural Schedule and Evidentiary Hearing Dates.

14. The Parties agreed to the following procedural schedule, which the ALJ finds acceptable and will adopt, with certain clarifications included below:

Item or Filing	Due Date or Adopted Dates
Answer Testimony & Attachments	September 18, 2019
Rebuttal and Cross-answer Testimony & Attachments	October 17, 2019
Prehearing Motions	October 24, 2019
Corrections to Pre-filed Testimony and Attachments	October 30, 2019
Settlement Agreements	October 30, 2019
Matrix of Order of Witnesses, Order of Cross-examination, and Estimated Cross-examination Times	November 7, 2019
Deadline for all Parties to file final electronic versions of all Hearing Exhibits	November 8, 2019
Deadline for Objections to the admissibility of any pre-filed Hearing Exhibits marked for identification	November 12, 2019 ⁴

⁴ After the Prehearing Conference, the ALJ reviewed his calendar and determined that the correct due date for this filing is November 12, 2019.

Evidentiary Hearing (3 days)	November 14, 15, and 18, 2019 (November 19th is reserved, if needed)
Statements of Position (Filed Simultaneously)	December 6, 2019

15. The Parties also requested that December 5 and 6, 2019 be reserved for a hearing on a settlement, if a majority of the Parties reach a comprehensive settlement of all the issues and file a settlement agreement by the October 30, 2019 deadline. After a discussion between counsel and the ALJ at the Prehearing Conference, the ALJ ruled that he would consider this proposal for a settlement hearing on December 5th and 6th **only if** the settlement agreement were to be unopposed. That is, those Parties not signing the settlement agreement must either not oppose or take no position on the settlement agreement before the settlement hearing would be scheduled for December 5 and 6, 2019. If any non-signing Party objects to the settlement agreement, the hearing on the settlement agreement will be scheduled for November 18 and 19, 2019. No Parties objected to these dates for a hearing on a contested settlement agreement. With this schedule, all Parties, including those supporting and those objecting to the settlement agreement, would have a fair and meaningful opportunity to prepare for the hearing on the settlement agreement. Moreover, Statements of Position on the merits of the settlement agreement would be due on December 6, 2019. Finally, the ALJ will have adequate time to prepare and to issue his Recommended Decision in sufficient time for the exceptions process to run and for the Commission to issue its decision by the March 7, 2020 end of the suspension period.

16. If a settlement agreement is negotiated and filed by the October 30, 2019 deadline (or by any deadline extended by the ALJ), Public Service and the settling parties shall file a joint

motion advising the ALJ whether or not the settlement is opposed, requesting the ALJ to schedule a hearing on the settlement agreement for the dates outlined in the preceding Paragraph 15, and requesting approval of the settlement agreement and settled rates and tariffs.

2. Discovery-related Matters.

17. Rule 1405 of the Rules of Practice and Procedure, 4 CCR 723-1, will govern discovery⁵ in this proceeding, with the modifications and clarifications discussed in the following subparagraphs:

- a) Service of all discovery requests after 3:00 p.m. Mountain Time (“MT”) on a Friday, the day before a Colorado State holiday, or on days when the Commission is not open for business (*i.e.* Saturday, Sunday, or a Colorado holiday), will be deemed served on the next business day. State holidays will be excluded from the calculation of discovery due dates.
- b) Responses to all discovery requests will be served on counsel for the requesting party within ten days after service of the discovery request.
- c) The discovery cut-off deadlines stated in Rule 1405(d), 4 CCR 723-1, will apply to initial discovery requests and to requests that follow-up on information provided in response to an initial discovery request. That is, all initial and follow-up discovery requests related to Public Service’s direct testimony and attachments shall be served prior to the deadline for filing answer testimony. All initial and follow-up discovery requests related to an intervenor’s answer testimony and attachments shall be served prior to the deadline for filing rebuttal and cross-answer testimony. All initial and follow-up discovery requests related to rebuttal and cross-answer and attachments shall be served no later than five business days prior to the first day of the hearing.
- d) All non-confidential discovery requests and responses will be served electronically on counsel for all parties. Counsel and Parties will not be directed to any third-party software, such as SharePoint, to access discovery responses.
- e) With the exception of any supplemental or corrected responses that may be subsequently filed, responses to an individual set of discovery requests, except for attachments, will be provided in a single, combined document. In the event that not all responses to an individual set of discovery requests

⁵ “Discovery requests” includes discovery requests, data requests, and Staff audit requests.

are available on the due date, the available responses will be provided in a single document on the due date,

- f) The parties will provide workpapers supporting their Answer, Rebuttal, or Cross-Answer Testimony within three business days of filing of the testimony.
- g) Responses to an individual set of discovery requests, except for attachments, will be provided in a single, combined document. In the event that not all responses to an individual set of discovery requests are available on the due date, the available responses will be provided in a single document on the due date.
- h) All confidential and highly confidential documents and discovery responses (and any requests containing confidential or highly confidential information) will be served only on counsel for the Parties⁶ that have executed the appropriate NDAs. The manner of service on counsel of discovery requests and responses containing confidential and highly confidential documents and information will be at the discretion of the serving counsel. In other words, counsel are not required to serve documents containing confidential and highly confidential information by electronic mail; they may choose hand-delivery or overnight delivery.

18. Except as a proposed Hearing Exhibit or as necessary to support or to respond to a motion, the Parties shall not file discovery requests or discovery responses with the Commission.

19. Except as a proposed Hearing Exhibit or as necessary to support or to respond to a motion, the Parties shall not serve discovery requests or discovery responses on the ALJ, on Commission Advisory Staff, or on Commission Advisory Counsel.

20. Motions pertaining to discovery disputes may be filed at any time. The response time to a motion pertaining to a discovery dispute shall be five business days. All discovery

⁶ See Rules 1101(g) and 1101(h), 4 CCR 723-1.

motions and responses shall be filed and then served electronically by e-mail. If necessary, the ALJ will hold a telephone hearing on a discovery-related motion, with notice to counsel for all Parties, as soon as practicable after the motion and response have been filed.

3. Confidential and Highly Confidential Information.

21. Rules 1100 and 1101 of the Rules of Practice and Procedure, 4 CCR 723-1, will govern the treatment of confidential information⁷ and highly confidential information⁸ for which extraordinary protection has been sought.

22. Rules 1100 and 1101, 4 CCR 723-1, specify the process by which information is designated as highly confidential and extraordinary protection may be granted to such highly confidential information. Pursuant to these rules, any Party claiming that information is highly confidential will file an appropriate motion in this Proceeding to obtain a decision finding that the information is highly confidential and the type extraordinary protection to be afforded to such highly confidential information. A decision granting extraordinary protection (*i.e.*, in the form of a highly confidential protective order) will govern the protections and disclosure of the highly confidential documents and information.

23. With respect to Hearing Exhibits, including witness testimony, that contain highly confidential information or confidential information, or both, the ALJ suggests the following guidance for formatting such Hearing Exhibits:⁹

- a) if an entire document is not confidential, each portion that contains confidential information will be clearly marked (*e.g.*, shaded), and each page

⁷ As used in this Decision, confidential information is information that a Party claims is confidential and that is filed under seal with the Commission.

⁸ As used in this Decision, highly confidential information is information that, in this proceeding, the ALJ has determined is highly confidential and that is subject to an order for extraordinary protection.

⁹ Decision No. R19-0628-I established procedures for the identification and marking of confidential information in hearing exhibits during the evidentiary hearing. These guidelines are in addition to, and do not appear to conflict with, the procedures addressed in Decision No. R19-0628-I.

will state in the heading: “This page contains confidential information as shown;”

- b) any portion of a witness’s testimony and exhibits that contains highly confidential information will be clearly marked (*e.g.*, shaded), and each page will state in the heading: “This page contains highly confidential information as shown;”
- c) if the same page contains both confidential information *and* highly confidential information, the highly confidential information will be marked differently from the confidential information (*e.g.*, by use of different shading), and each page will state in the heading: “This page contains highly confidential information and confidential information as shown”; and
- d) the public version of a document that contains confidential information or highly confidential information, or both, will identify in the heading each page on which that information appears.

24. These guidelines are suggestions from the ALJ. If a Party has **already** prefiled its electronic Hearing Exhibits, marked for identification in accordance with the procedures adopted in Decision No. R19-0628-I, and those Hearing Exhibits make it clear which page or pages contain confidential or highly confidential information, that Party does not need to refile the Hearing Exhibit to conform to these format guidelines. If a Party has **not yet** prefiled its electronic Hearing Exhibits, in accordance with the procedures adopted in Decision No. R19-0628-I, please use these guidelines.

25. For clarity of the evidentiary record, and to assist the ALJ and the Parties during the hearing, a sponsoring Party shall assure, when appropriate and if possible, that the page numbers and the line numbers are the same on the public version of a document, the confidential version of the document, and the highly confidential version of the document.

4. Assignment of Remaining Blocks of Hearing Exhibit Numbers.

26. Decision No. R19-0628-I assigned Hearing Exhibit number blocks to the Parties to this Proceeding as of the date of mailing of that Decision (July 24, 2019). Now that all pending motions for permissive interventions have been granted, Hearing Exhibit number blocks

will be assigned to the new Intervenor. The following is a complete list of the Hearing Exhibit number blocks assigned to all the Parties:

100-299	Public Service
300-399	Office of Consumer Counsel
400-499	Trial Staff of the Commission
500-599	Energy Outreach Colorado
600-699	Atmos Energy Corporation
700-799	WoodRiver Energy, LLC
800-899	Black Hills Colorado Gas, Inc.
900-999	Colorado Natural Gas, Inc.
1000-1099	Tiger Natural Gas, Inc.
1100-1199	Climax Molybdenum Company

II. ORDER

A. It Is Ordered That:

1. The Filing of Procedural Schedule and Provisions of Discovery and Confidential Information Pursuant to Decision No. R19-0622-I, filed by Public Service Company of Colorado on July 29, 2019, is acknowledged.

2. An evidentiary hearing is scheduled in this matter as follows:

DATES: November 14, 15, and 18, 2019 (November 19, 2019 is reserved for hearing, if needed)
TIME: 9:00 a.m.
PLACE: Hearing Room
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

3. Consistent with the discussion, findings, and conclusions in this Decision, the procedural schedule, as stated in Paragraph I.B.1.14 at pages 5 and 6 of this Decision, is adopted and shall be followed in this Proceeding.

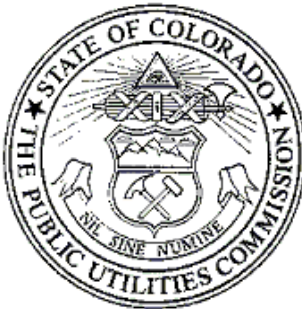
4. The procedures and deadlines for discovery (in ¶¶ I.B.1.17 through 20) and the procedures for confidential information (in ¶¶ I.B.3.21 through 25), set forth at pages 7 through 10 of this Decision, are adopted and shall be followed in this Proceeding.

5. The Hearing Exhibit number blocks assigned to the Parties, as stated in Paragraphs I.B.4.26 at pages 10 and 11 of this Decision, are adopted and shall be followed in this Proceeding.

6. The Parties shall comply with this Interim Decision, shall make the filings required by the procedural schedule adopted herein, and shall abide by the procedural directives adopted herein.

7. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge