

Decision No. R19-0722-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
SETTING DEADLINES, ESTABLISHING
PROCEDURES, SCHEDULING HEARING,
AND DISMISSING COMPLAINANTS**

Mailed Date: August 29, 2019

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I. STATEMENT

A. Summary.

1. This Decision schedules an evidentiary hearing on the merits of the Complaints for November 19 through 22, 2019, establishes deadlines and procedures, dismisses certain Complainants as parties, confirms the party status of Complainant Chanden, and addresses outstanding motions. The Decision also orders San Luis Valley Rural Electric Cooperative, Inc. (San Luis Valley) not to discontinue service for the Complainants and residents of the Town of Crestone (Town) while this matter is pending, enters other procedural orders, and provides additional advisements and information.

II. BACKGROUND, FINDINGS, AND CONCLUSIONS

A. Motions for Exemption from Appearance at Prehearing Conference.

2. On July 24, 2019, the Administrative Law Judge (ALJ) scheduled this consolidated proceeding for an in-person prehearing conference for August 27, 2019 in Moffat, Colorado. Decision No. R19-0624-I.

3. On August 19, 2019, Complainants Paul Koppana, Sydney Argenta, Janet Martinez, and Tom Malecek (collectively, movants or moving parties), each filed separate Motions for Exemption from Appearance at Prehearing Conference (Koppana Motion, Argenta Motion, Martinez Motion, and Malecek Motion). As grounds, Mr. Koppana states that he is unable to attend the prehearing conference due to a medical procedure. Koppana Motion. He also states that he wishes to remain a Complainant in this proceeding, and that he waives any objections to rulings made during the prehearing conference. *Id.* Ms. Argenta states that she is unable to attend because she will be out of the state at the time of the prehearing conference and is unable to change these plans. Argenta Motion. Ms. Argenta also states that she wishes to remain a Complainant in this proceeding, and that she waives any objections to rulings made during the prehearing conference. *Id.* Ms. Martinez states that she will be out of the country at the time of the prehearing conference and is unable to change these plans. Martinez Motion. Ms. Martinez also states that she wishes to remain a Complainant in this proceeding and that she waives any objections to rulings made during the prehearing conference. *Id.* Finally, Mr. Malecek states that he is unable to attend the prehearing conference due to conflicting appointments that cannot be changed. Malecek Motion. Mr. Malecek also states that he wishes to remain a Complainant in this proceeding and that he waives any objections to rulings made during the prehearing conference. *Id.* Each of these Motions indicate that the movants served

their Motions on San Luis Valley “at the addresses on record with the PUC” by United States Mail, on August 14, 2019. Koppana Motion at 2; Argenta Motion at 2; Martinez Motion at 2; and Malecek Motion at 2.

4. On August 23, 2019, San Luis Valley filed a Response in Opposition to Motions for Exemption from Appearance at Prehearing Conference (Response). The Response objects to the Motions, and argues that these Complainants’ absence at the prehearing conference will frustrate the purpose of the prehearing conference and prejudice San Luis Valley’s ability to defend against the claims in this case. Response at 4-5. San Luis Valley also argues that the Motions indicate that the Complainants do not fully appreciate that they are obligated to participate in this proceeding, and to follow the Commission’s Rules of Practice and Procedure, despite the advisements in Decision No. R19-0624-I. *Id.* at 3-5. San Luis Valley also asserts that the Complainants failed to serve their Motions on San Luis Valley’s counsel, as required by Rule 1205(d). 4 *Code of Colorado Regulations* (CCR) 723-1.

5. The Town did not file a response to the Motions.

6. The ALJ convened the prehearing conference on August 27, 2019 as noticed. *See* Decision No. R19-0624-I. None of the moving parties appeared. During the prehearing conference, the ALJ found that the movants’ Motions demonstrate a willingness to continue to participate in this matter as Complainants. The Motions also indicate that movants are aware of their obligation to pursue their Complaints. The Motions each provide a basis for the movants’ assertions that they are unable to appear at the prehearing conference. Based on the foregoing, the ALJ will not dismiss the movants as Complainants due to their failure to appear at the prehearing conference.

7. Due to the timing of the Motions, and the fact that none sought to shorten the response time to their Motions, the ALJ did not rule on the Motions prior to the prehearing conference. See Rule 1400(b) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1 (establishing a 14-day response time to motions, unless a different response time is ordered). As a result, at the time of the prehearing conference, the movants failed to appear without being excused from appearing at the prehearing conference. Given this, during the prehearing conference, the ALJ denied the Motions as moot, and deemed their failure to appear a waiver of objections to rulings made during the prehearing conference.

8. The movants' failure to properly serve their Motions cannot be overlooked. Koppana Motion at 2; Argenta Motion at 2; Martinez Motion at 2; and Malecek Motion at 2 (certificates of service do not state that the motions were served on San Luis Valley's counsel); and Response at 4 (indicating counsel was not served). This is a direct violation of Rule 1205(d), which requires parties to serve any filing they make in a proceeding upon *both* the party and the party's attorney. 4 CCR 723-1. Service upon parties and their attorneys is important to ensure that all parties receive due process and are not prejudiced.

9. The movants have already been advised that they must review and follow the Commission's Rules of Practice and Procedure, and have twice been informed how to access those rules. Decision No. R19-0501-I at ¶ 12 and Decision No. R19-0624-I at ¶ 16.

10. Although it is evident that the movants attempted to follow the Commission's rules on service, their attempt was not successful. Movants must do better. It is critical that they review and follow the Commission's rules. *Any parties' failure* to do so in the future may result in rulings adverse to their interests, including denying motions and requests for relief.

B. Procedural Schedule and Hearing Dates.

11. The following parties appeared at the prehearing conference: San Luis Valley, and its counsel Mr. David Dodero, the Town and its counsel Mr. Brandon Dittman, Anne Pace, Lili Zohar, Anita Betts, Michael Manthey, Allyson Ransom, Paul Shippee, Doug Clark, Robert Salmi, Sheila Poor, Ted King, Kathryn King, Deborah Michalak, John Rowe, David Lee, Signe Ranstrom, Mark Rosen, Bill Aldinger, Paul Kloppenburg, Joshua Hillman, William Miiller,¹ Justin Vanwart, Kaye Shedlock, Mark Bluestein, Bob Adler, Meryl Ennis, and Wendy Chanden. Ms. Carol Lee² was also present, but she is not included as a Complainant anywhere in the June 4, 2019 Complaint. As already noted, Complainants Paul Koppa, Sydney Argenta, Janet Martinez, and Tom Malecek did not appear at the prehearing conference. In addition, Mr. Larry Calloway also did not appear. The ALJ will address Mr. Calloway's status as a party later in this Decision.

12. After significant discussion, the parties agreed to evidentiary hearing dates of November 19 to 22, 2019.³ The parties agreed that a four-day hearing is sufficient.

13. The parties agreed, and the ALJ established deadlines for the parties to: issue discovery requests; respond to discovery requests; file and exchange witness and exhibit lists; to file dispositive motions; to file pretrial motions; respond to pretrial motions; and file post-hearing statements of position. All these deadlines and related requirements are detailed in the ordering paragraphs below. All deadlines in this Decision are the latest date by which a party must or may take the specified action; parties may act before the expiration of the deadlines (*e.g.*,

¹ Mr. Miiller confirmed the spelling of his last name as Miiller, rather than Miller.

² Ms. Lee introduced herself when the ALJ asked for all parties to do so.

³ The ALJ notes that Complainant John Rowe stated that he has a conflict with these hearing dates. But, given the significant difficulty the parties had with identifying hearing dates, and that no other party objected to the hearing dates, the ALJ scheduled the hearing as indicated, despite this conflict.

parties may issue discovery requests before the deadline to issue discovery requests, but may not issue such requests after the deadline).

14. In addition, Complainants requested approval to amend the Complaint filed on June 4, 2019 (June 4, 2019 Complaint). The ALJ granted this request, and ordered that the amended complaint be filed by August 30, 2019. *See* Rule 1309(a), 4 CCR 723-1.

C. Discovery and Other Procedural Matters.

15. During the prehearing conference, the ALJ described how the evidentiary hearing will proceed (*e.g.*, order of evidence, burden of proof, opening statements). The ALJ explained that given the volume of Complainants, most of whom are representing themselves in this proceeding, it is important for the Complainants to coordinate their evidentiary presentation so that the hearing may be completed in the time allotted.

16. To facilitate this, the unrepresented Complainants agreed that Ms. Zohar and Ms. Pace will act as lead Complainants, and will help coordinate their efforts in this proceeding.⁴ In addition, the ALJ ordered all Complainants to coordinate with each other in order to avoid presenting unnecessarily duplicative evidence at the hearing. The ALJ specifically advised that unduly duplicative evidence will not be permitted.

17. Given the closely approaching hearing date, the ALJ established discovery limitations, including a ten-day response time, as outlined in the ordering paragraphs below. Relatedly, the ALJ entered orders, with the parties' agreement, to ensure that the unrepresented

⁴ The ALJ made it clear that as non-attorneys, Ms. Zohar and Ms. Pace may not represent anyone other than themselves in this proceeding; thus, their efforts are simply to help coordinate efforts in this proceeding with other Complainants.

Complainants may receive discovery requests in the most expeditious manner possible.⁵ Specifically, the parties agreed, and the ALJ ordered that discovery may be served by E-mail. One Complainant, Mr. Aldinger, does not have an E-mail address or internet access, but he agreed that discovery requests to him may be served on him by E-mail to Ms. Zohar and Ms. Pace (at their E-mail addresses). Ms. Zohar and Ms. Pace agreed to facilitate Mr. Aldinger's receipt of discovery requests in a timely manner.

18. The ALJ also ordered that the parties will be permitted to present opening statements during the evidentiary hearing, but the ALJ limited the amount of time each party is allotted for opening statements, as detailed in the ordering paragraphs below.

19. During the prehearing conference, several questions arose concerning the Commission's E-Filing System. Parties may register and use this system for free. Although the Commission does not mandate that parties use the Commission's E-Filing System, the ALJ encourages the parties to register to use the system because it provides added efficiencies, particularly as it relates to receiving orders or other filings in a proceeding. When a party registers as a user in the Commission's E-Filing System, the party expressly agrees to accept service of documents filed in Commission proceedings through the E-Filing System. Rule 1205(b), 4 CCR 723-1. Thus, the Commission's E-Filing System allows parties to electronically file documents in a proceeding and to serve such documents on other parties who have registered as users in the Commission's E-Filing System on the day such filings are made in the system. It also enables parties to receive Commission decisions electronically on the day the decisions are filed in the proceeding. Such time-saving measures may prove especially valuable

⁵ Service by U.S. mail presents unique issues because many of the unrepresented parties' mailing addresses are post office boxes. This may create additional delay in receiving discovery requests, as they must go to the post office to get their mail.

here, given the deadlines in this proceeding, and that many parties do not receive mail at their home addresses.

20. In addition, the Commission's administrative record for this consolidated proceeding is contained within its E-Filing System; thus, any filings made in this proceeding, including paper filings, are ultimately included in the Commission's E-Filing System. For example, if a party mails a paper filing to the Commission, that document is electronically scanned, then added to the administrative record in this consolidated proceeding, within the Commission's E-Filing System. And, in such a circumstance, the document is not considered filed with the Commission until the Commission receives the paper document; this means that when the party mails the document, the party will not know the precise filing date, as it may take several days for the Commission to receive the document.

21. During the course of the prehearing conference, the ALJ repeatedly advised all parties that they must review and follow the Commission's Rules of Practice and Procedure, and again does so here. Parties may access those rules electronically at the Commission's website at: <https://www.colorado.gov/pacific/dora/pucrulespractice>.

D. Confidential Documents and Exhibits.

22. During the prehearing conference, San Luis Valley indicated that at least one document it expects to disclose in discovery is confidential, and that it wishes to ensure the document will be maintained as confidential.

23. The ALJ informed the parties that the Commission has rules to allow the exchange and use of confidential information in Commission proceedings, and that those rules should be followed. *See e.g.*, Rules 1100 to 1103, 4 CCR 723-1. Given the likelihood that confidential documents will be exchanged in discovery, and may be used as exhibits,

it is appropriate for the parties to sign, exchange, and file non-disclosure agreements, as contemplated by Commission Rule 1100(i), 4 CCR 723-1. During the hearing, counsel for the Town agreed to help coordinate that effort with the unrepresented Complainants. Doing so may help avoid delay in the parties' receipt of confidential information.

E. Identified Complainants' Party Status.

24. The June 4, 2019 Complaint lists Mr. Larry Calloway as a Complainant, but does not include his signature. Complaint at 4-7. In addition, the Complaint also lists Wendy Thandem as a Complainant, but there is no signature matching that name. *Id.* Instead, the Complaint includes a signature for Wendy Chanden, who is not listed as a Complainant. *Id.* Based on these irregularities, the ALJ ordered that Mr. Calloway, Ms. Thandem, and Ms. Chanden make a filing by June 24, 2019 indicating whether they join the Complaint, and provide any other information necessary to clarify the irregularities. Decision No. R19-0501-I. Mr. Calloway, Ms. Thandem, and Ms. Chanden failed to make the required filing. Mr. Calloway did not appear at the prehearing conference. Ms. Chanden appeared, and clarified that the Complaint contained typographical errors in identifying Thandem instead of Chanden. Ms. Chanden stated that she wishes to continue as a Complainant in the proceeding. The ALJ finds that Ms. Chanden has adequately explained the Complaint's irregularities relating to her, and orders that she is a Complainant to this proceeding. Given that there is no Wendy Thandhem, the ALJ will also ensure the Commission records are updated to remove that name as a party.

25. Given that Mr. Calloway did not sign the June 4, 2019 Complaint, did not appear at the prehearing conference, did not make a filing in response to Decision No. R19-0501-I, and has made no other filing since the proceeding was initiated, the ALJ finds that Mr. Calloway is not a party to this proceeding. To the extent that Mr. Calloway was ever a party to this

proceeding, he is dismissed as a party to this proceeding for failing to participate and prosecute his claims. *Rathbun v. Sparks*, 425 P.2d 296, 298-99 (Colo. 1967); *Edmond v. City of Colorado Springs*, 226 P.3d 1248, 1253 (Colo. App. 2010); *People in the Interest of R.F.A.*, 744 P.2d 1202, 1203 (Colo. App. 1987).

26. During the prehearing conference, the following Complainants asked to withdraw or be dismissed as parties to this proceeding: Ms. Anita Betts, Ms. Kathryn King, Mr. Ted King, and Mr. Bob Adler. The ALJ granted their requests.

F. Discontinuation of Service.

27. At the prehearing conference, San Luis Valley voluntarily agreed not to discontinue service for any Complainant and Crestone residents while this matter is pending. The ALJ is entering an order consistent with this agreement.

III. ORDER

A. It Is Ordered That:

1. An evidentiary hearing on the merits of the Complaints in this consolidated proceeding is scheduled as follows:

DATES: November 19, 20, 21, and 22, 2019

TIME: 9:00 a.m.

PLACE: Colorado College, Baca Campus
1 Baca Campus Road
Conference Room A
Moffat, Colorado 81143

2. Consistent with the discussion in this Decision, the Motions for Exemption from Appearance at Prehearing Conference which Complainants Paul Koppana, Sydney Argenta, Janet Martinez, and Tom Malecek filed are denied as moot. Complainants Paul Koppana,

Sydney Argenta, Janet Martinez, and Tom Malecek have waived objections to rulings made during the August 27, 2019 prehearing conference.

3. **Identified Complainants' Party Status.** Consistent with the above discussion, the following individuals are dismissed as parties: Messrs. Larry Calloway, Ted King, and Bob Adler; and Mses. Anita Betts and Kathryn King. As discussed above, Ms. Wendy Chanden is a Complainant and party to this proceeding, and Wendy Thandem is not. Commission records will be updated to reflect these changes.

4. **Deadline to Amend Complaint.** The June 4, 2019 Complaint in this consolidated proceeding may be amended. The amended complaint must be filed and served *on or by August 30, 2019*. If an amended complaint is filed, the evidentiary hearing scheduled in this matter will address the merits of the amended complaint.

5. **Deadline to Issue Discovery Requests.** Any party seeking discovery must issue their discovery requests *on or by September 27, 2019*. Discovery requests and responses should not be filed with the Commission.

6. **Limits on and Service of Discovery Requests.** The parties are limited to issuing 20 interrogatories, 20 requests for production of documents, and 20 requests for admission. The parties are further limited to conducting two depositions. Consistent with the above discussion, Complainants may be served with discovery requests at the E-mail addresses they provided in this proceeding, except that Complainant Bill Aldinger may be served by E-mail to Complainants Lili Zohar and Ann Pace. All discovery requests to the unrepresented Complainants must also be sent to Complainants Lili Zohar and Ann Pace by E-mail.

7. **Deadline for Witness Lists, Exhibits Lists and Exhibits.** The parties must file and serve pre-marked exhibits, witness lists, and exhibit lists that comply with all requirements

of this Decision on or by *November 5, 2019*. Any party may offer any hearing exhibit into evidence that is listed in any other party's hearing exhibit list and may call any witnesses to testify to who is listed in any other party's witness list. This has no impact on witness availability or willingness to testify.

8. **Exhibit Requirements.** The following requirements apply to all exhibits the parties intend to offer into evidence during the evidentiary hearing, and to exhibits listed on the parties' hearing exhibit lists:

- a. Pre-marking Hearing Exhibits. All exhibits must be pre-marked as a "Hearing Exhibit" with a hearing exhibit number consistent with the parties' assigned hearing exhibit number blocks, and must be pre-marked with the consolidated proceeding numbers (*e.g.*, Hearing Exhibit 1, Consolidated Proceeding Nos. 19F-0315E and 19F-0351E).
- b. Hearing Exhibit Number Block Assignments. Complainant Town of Crestone (Town) is assigned hearing exhibit numbers 1 through 99; the remaining Complainants are assigned hearing exhibit numbers 100 through 299. San Luis Valley Rural Electric Cooperative, Inc. (San Luis Valley) is assigned hearing exhibit numbers 300 to 400.
- c. Page Numbering Hearing Exhibits. Any hearing exhibit longer than two pages must be sequentially page-numbered (*e.g.*, each page of a ten-page exhibit must include a page number, from one to ten).
- d. Hearing Exhibits Filed Using Commission's E-Filing System: If a party files hearing exhibits with the Commission using the Commission's E-Filing System, when prompted to input a title for the filing, the party must title the hearing exhibit to include the hearing exhibit number and the title of the document itself (*e.g.*, "Hearing Exhibit 100 – June 4, 2019 Complaint"). Use of the Commission's E-Filing System to make filings is optional.
- e. Copies of Hearing Exhibits. At the evidentiary hearing, each party must bring three copies of each hearing exhibit they intend to offer into evidence. Those copies are for the witness, the court reporter, and the Administrative Law Judge. In addition, the parties must coordinate with each other as to whether to bring additional copies of hearing exhibits for each other to use during the hearing.

9. **Witness List Requirements.** Witness lists must include a brief description of the witnesses' anticipated testimony, the witnesses' contact information, and the anticipated amount of time the party expects will be needed for their portion of the witnesses' testimony.

10. **Exhibit List Requirements.** Exhibit lists must identify the hearing exhibit number, title of each hearing exhibit, and provide a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing.

11. **Duplicative Evidence—Witness Testimony and Exhibits.** As discussed above, duplicative evidence will not be permitted during the hearing. As such, the parties must make a good faith effort to coordinate with each other to avoid offering identical hearing exhibits and duplicative testimony into evidence.

12. **Dispositive Motions' Deadline.** Dispositive motions must be filed and served *on or by October 11, 2019*. As referenced here, a dispositive motion is a motion seeking to resolve one or more issues in this consolidated proceeding. Dispositive motions are optional.

13. **Pretrial Motions and Response Deadlines.** Pretrial motions must be filed and served *on or by November 8, 2019*; responses to pretrial motions must be filed and served *on or by November 15, 2019*.

14. **Opening Statements.** The Town and San Luis Valley are each permitted ten minutes to make an opening statement at the evidentiary hearing; the remaining Complainants are permitted a total of ten minutes for their opening statement, which they may divide among themselves. Opening statements are optional.

15. **Statements of Position Deadline.** Statements of position must be filed and served *on or by November 26, 2019*; no responses may be filed. Statements of position are permitted in

lieu of verbal closing arguments, and are written closing arguments. Statements of position are optional.

16. **Discontinuation of Service.** Consistent with the discussion above, San Luis Valley may not discontinue service to the Complainants and the Town's residents while this matter is pending.

17. 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