

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0425E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING EXPENSES INCURRED FOR THE PERIOD JANUARY 2018 THROUGH DECEMBER 2018 THAT ARE RECOVERED THROUGH THE ELECTRIC COMMODITY ADJUSTMENT AND APPROVING THE CALCULATION OF 2018 SHORT TERM SALES MARGINS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
DENYING PERMISSIVE INTERVENTION
AND SETTING PREHEARING CONFERENCE**

Mailed Date: September 17, 2019

I. STATEMENT

1. On August 1, 2019, Public Service Company of Colorado (Public Service or the Company) filed its Verified Application for approval of fuel, purchased energy and purchased wheeling expenses incurred from January 1, 2018 through December 31, 2018, that have been reflected in the Company's Electric Commodity Adjustment (ECA). Public Service also applied for approval of the Company's calculation of the 2018 Short-Term Sales Margins that have been used to adjust the 2019 ECA Deferred Account Balance.

2. On August 27, 2019, 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 listed a series of issues they wish to investigate.

3. On August 29, 2019, Trial Staff of the Commission (Staff) timely filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1403(b), and Request for Hearing. The intervention is of right, and Staff is a party in this matter.

4. On August 30, 2019, Ms. Leslie Glustrom, a residential electric customer, filed a Request for Deliberation and Questions Related to Future Electronic Commodity Expenses or in the Alternative Petition to Intervene *pro se*. Ms. Glustrom explains that she is a customer of Public Service and believes that her interests cannot be represented by any other party.

5. On September 11, 2019, by minute order, Proceeding 19A-0425E was referred to an Administrative Law Judge (ALJ).

6. On September 13, 2019, Public Service filed its Response and Objection to Ms. Leslie Glustrom's Intervention.

II. INTERVENTIONS

A. Standard for Intervention

1. Two classes of parties may intervene in proceedings such as this: parties with a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention). Rule 1401(b) and (c), 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure; *see* § 40-6-109(1), C.R.S., *RAM Broadcasting of Colo. Inc., v. Public Utilities Comm'n*, 702 P.2d 746, 749 (Colo. 1985).

2. Commission Rule 1401(c) of the Rules of Practice and Procedure 4 CCR 723-1, requires persons seeking permissive to show the following:

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. If a motion to permissively intervene is filed in a natural gas or electric proceeding by a residential consumer, agricultural consumer, or small business consumer, the motion must discuss 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. The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Motions to intervene by permission will not be decided prior to expiration of the notice period.

3. 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).

4. Further, Rule 1401(c), 4 CCR 723-1, requires that a movant who is a “residential customer, agricultural customer, or small business customer” 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).

B. Interventions by Right

5. The Staff, the OCC are intervenors by right. They are parties in this proceeding.

C. Permissive Intervenor

6. Ms. Leslie Glustrom, a residential electric customer, has filed a petition for permissive intervention.

7. Public Service has objected to the intervention of Ms. Glustrom.

8. Ms. Glustrom states she has a financial interest in the above captioned proceeding due to paying a monthly utility bill to Public Service. Ms. Glustrom also argues that no other party can represent her interests since, to her knowledge, no other party has ever challenged the fuel costs passed through the ECA and her knowledge of the coal industry.

9. Public Service objects to Ms. Glustrom’s intervention and argues she does not meet the statutory standard for Commission intervention under § 40-6-109(1), C.R.S., and

Rule 1401. Public Service cites Ms. Glustrom's failure to discuss why she is not adequately represented by the OCC as required by Rule 1410(C) since she is a rate payer of Public Service. In addition, Public Services argues that the OCC and Staff state in its intervention that it will address the issue that Ms. Glustrom stated that she intends to pursue.

10. A Party interested in intervening in a Commission proceeding is required to follow Commission Rule 1401(c) for a permissive intervention to be granted. The addition of parties who do not have a pecuniary or tangible interests that may be **substantially** (*emphasis added*) affected will cause, due to their lack of an interest, cause the proceeding to veer off into areas not the subject of the proceeding or at best present cumulative evidence.

11. The addition of intervenors without a valid pecuniary or tangible interest also increases the time of the hearing, the amount of discovery requests, and other legal costs of the utility. These legal costs are recoverable and end up being charged to ratepayers. It is not just or reasonable to allow intervenors in a proceeding that have no valid pecuniary or tangible interest when the only result is higher legal costs which are passed on to ratepayers.

12. There are numerous ways that parties who may have an interest in a proceeding can participate and make their interest known to the Commission. A party can file for *Amicus Curiae* status and file a brief that expresses their opinions, beliefs, or hopes without delaying the efficient functioning of the Commission or increase legal costs for the utility. A party may also file a public comment or have members of their group file public comments.

13. The Commission has generally been liberal in the granting of permissive interventions. The only requirement is that a party have a pecuniary or tangible interests that may be substantially affected by the proceeding.

14. Ms. Glustrom fails to demonstrate pecuniary or tangible interests not shared by other residential ratepayers. As pointed out by Public Service, she has not shown that other parties in this proceeding cannot represent her interests in this matter. Ms. Glustrom does not address why the OCC would not represent her interests in this proceeding as required under Rule1401(C). In addition, she does not allege bad faith, collusion, or negligence on the part of the OCC. Ms. Glustrom's interests are represented adequately by other parties, therefore her Petition to Intervene is denied.

15. The parties in this proceeding are Public Service, Staff, and the OCC.

III. PREHEARING CONFERENCE

16. It is necessary to schedule a hearing, to establish a procedural schedule, and to discuss discovery and other matters. A prehearing conference will be held on October 8, 2019.

17. The undersigned ALJ expects the Parties to come to the prehearing conference with proposed dates for disclosures, including hearing dates, for the procedural schedule. The Parties must consult prior to the prehearing conference with respect to the listed matters and are encouraged to present, if possible, a procedural schedule and hearing dates that are acceptable to all Parties.

18. If the Parties reach agreement on a procedural schedule, they may file the proposed procedural schedule and a motion to vacate the prehearing conference.

IV. ORDER

A. It Is Ordered That:

1. A prehearing conference in this matter is scheduled for the following date, at the following time, and in the following location:

DATE: October 8, 2019
TIME: 10:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

2. The Petition to Intervene filed by Ms. Leslie Glustrom on August 30, 2019, is denied.

3. 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