

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0049G

IN THE MATTER OF ADVICE LETTER NO. 961 FILED BY PUBLIC SERVICE COMPANY
OF COLORADO TO INCREASE RATES FOR ALL NATURAL GAS SALES AND
TRANSPORTATION SERVICES TO BECOME EFFECTIVE MARCH 7, 2020.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
ADDRESSING PERMISSIVE INTERVENTIONS
AND DESIGNATING CERTAIN
INTERESTED PERSONS AS *AMICI CURIAE***

Mailed Date: April 1, 2020

TABLE OF CONTENTS

I. STATEMENT.....	2
A. Procedural History.....	2
B. Failure to Confer in Motions for Permissive Intervention.	4
II. FINDINGS AND CONCLUSIONS.....	11
A. Ruling on the Merits of Motions for Permissive Intervention.	11
1. Standards for Permissive Intervention.	11
2. Motions that Satisfy the Standards for Permissive Intervention.	13
3. Motions that Fail to Satisfy the Standards for Permissive Intervention.....	18
III. ORDER.....	21
A. It Is Ordered That:	21

I. STATEMENT

A. Procedural History.

1. On February 5, 2020, Public Service Company of Colorado (Public Service) filed with the Colorado Public Utilities Commission (Commission), Advice Letter No. 961-Gas, accompanying tariff sheets, and supporting direct testimony and attachments. This filing is a combined Phase I and Phase II rate case proceeding (2020 Gas Rate Case).

2. 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.

3. By Decision No. C20-0112 (mailed on February 20, 2020) (Suspension Decision), and pursuant to § 40-6-111(1), C.R.S. (2019), and Rule 1305(c) of the Rules of Practice and Procedure. 4 *Code of Colorado Regulations* (CCR) 723-1, the Commission set the tariffs filed with Advice Letter No. 961-Gas for hearing and thereby suspended their effective date for 120 days from the proposed effective date, or until July 5, 2020. Decision No. C20-0112 established an intervention deadline for 30 days after its mailed date, or no later than March 23, 2020.¹ The Suspension 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.

4. Pursuant to § 40-6-111(1)(b), C.R.S. (2019), Decision No. R20-0145-I (mailed on March 5, 2020), the ALJ suspended the effective date of the tariff sheets filed with Advice Letter No. 961-Gas for an additional 130 days, or for a total of 250 days until November 12, 2020.

¹ Since the 30-day deadline for filing interventions, ordered in Decision No. C20-0112, fell on Saturday, March 21, 2020, the deadline was extended by operation of law until the next business day, or until Monday, March 23, 2020. Section 40-6-121, C.R.S.

Decision No. R20-0145-I scheduled a prehearing conference for March 26, 2020 in Commission Hearing Room B at 1:30 p.m.

5. Decision No. R20-0145-I also acknowledged the Notice of Intervention as of Right by Staff, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401 and Request for Hearing, filed by Trial Staff of the Colorado Public Utilities Commission (Staff) on February 28, 2020.²

6. Decision No. R20-0179-I (mailed on March 17, 2020) acknowledged the Notice of Intervention of Right, Entries of Appearance, and Request for Hearings, filed by the Colorado Office of Consumer Counsel (OCC) on March 9, 2020.

7. On March 23, 2020 at 4:24 pm., the Colorado Energy Office (CEO) filed a Notice of Intervention by Right (CEO's Intervention). CEO states it intervenes by right pursuant to its organic statutes.³ However, CEO is not sure what evidence, if any, it will attempt to present, whether it will file testimony, or about which issues it may seek to provide testimony. Nevertheless, CEO commits that its intervention will not broaden the issues in this proceeding.⁴ CEO's Intervention by right is acknowledged. CEO became a Party to this Proceeding at the time and date CEO's Intervention was filed.

8. Until March 23, 2020 at 4:24 p.m., the only Parties to this Proceeding were Public Service, Staff, and OCC.

² See Rule 1305(d) of the Rules of Practice and Procedure. 4 CCR 723-1, after the Commission issues a suspension decision, "Any person wishing to participate as a party in any hearing the Commission may hold on a suspended tariff, price list, or time schedule, must file a notice of intervention as of right or motion to permissively intervene as provided in rule 1401." Rule 1401(a), 4 CCR 723-1, states in part: "Except [for Staff] ..., any person may file a notice of intervention as of right or a motion to intervene by permission within 30 days of notice of any administrative or adjudicatory proceeding, unless the Commission's notice or a specific rule or statute provides otherwise."

³ Sections 24-38.5-101(1) and 24-38.5-102(1), C.R.S.

⁴ CEO's Intervention, ¶¶ 4, 6, and 7 at pages 2 and 3.

9. On March 10, 2020, Colorado Governor Jared Polis declared a state of emergency over the novel coronavirus pandemic (COVID-19). Since then, the Commission has adopted measures to address how to manage the challenges presented by COVID-19 safely and effectively. In response to the Governor's emergency declaration and Commission actions, Decision No. R20-0183-I (mailed on March 18, 2020) vacated the March 26, 2020 prehearing conference and rescheduled it for April 21, 2020 at 1:30 p.m.⁵ Decision No. R20-0183-I also extended to April 3, 2020, at 12:00 Noon, the deadline for Public Service to file any consensus agreements reached through discussions between the Parties (and putative parties), regarding a consensus procedural schedule, hearing date(s), and the other procedural matters addressed in Decision No. R20-0145-I.

B. Failure to Confer in Motions for Permissive Intervention.

10. By the March 23, 2020 deadline for filing intervention pleadings, and as of the time and date that Interim Decision was issued, several interested persons or groups had filed motions for permissive intervention.

11. Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, "the responding party shall have 14 days after service of [a] motion, or such lesser or greater time as the Commission may allow, in which to file a response." Unless response times for any of the motions for permissive intervention were shortened by the Commission or ALJ, Public Service and other Parties would have 14 days after service of the motions on its counsel within which to file responses.

⁵ Depending on the Commission's updated responses to the continuing COVID-19 crisis, the prehearing conference may be held by telephonic hearing. If so, a future Interim Decision will be issued with instructions to the Parties and interested persons about how to access the prehearing conference.

12. Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1, requires: “Before filing a motion, moving counsel shall make a reasonable good faith effort to confer with all parties about the motion and report when the requested relief is unopposed. If no conference has occurred, the reason why shall be stated.” The few exceptions to this conferral requirement do *not* include motions for permissive intervention.⁶

13. On March 6, 2020, Atmos Energy Corporation (Atmos) filed a Motion to Permissively Intervene (Atmos’ Motion). Atmos is a natural gas distribution company and a large gas transportation customer of Public Service. Atmos’ Motion contains no information regarding conferral about its motion with counsel for Public Service, Staff, and OCC, as required by Rule 1400(a) of the Rules of Practice and Procedure.⁷ Atmos’ Motion was served electronically on counsel for Public Service, Staff, and OCC.⁸ Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, responses to Atmos’ Motion were due no later than March 20, 2020.⁹

14. On March 11, 2020, the Federal Executive Agencies (FEA) filed a combined Motion to Intervene, Appear *Pro Hac Vice*, and Excuse the Attendance of Associated Counsel (FEA’s Motions). FEA consists of certain federal agencies of the United States government that have offices, facilities, and/or installations in Public Service’s service area and that purchase natural gas service from Public Service.¹⁰ FEA’s Motions contain no information about conferral

⁶ The conferral exceptions are stated in Rule 1400(a)(I), 4 CCR 723-1: “Conferral is not required for motions made in accordance with rule 56 of the Colorado Rules of Civil Procedure, motions made in accordance with Commission rule 1308(e) [*i.e.*, motions to dismiss], motions to strike, motions for an alternative form of notice, or motions for an attorney to withdraw from a proceeding.”

⁷ Rule 1400(a), 4 CCR 723-1.

⁸ Atmos Motion, Certificate of Service at page 4.

⁹ Rule 1400(b), 4 CCR 723-1.

¹⁰ FEA’s Motions, ¶ 2 at pages 2 and 3.

on its motions with counsel for Public Service, Staff, or OCC, as required by Rule 1400(a) of the Rules of Practice and Procedure. FEA's Motions were served electronically on counsel for Public Service, Staff, and OCC.¹¹ Pursuant to Rule 1400(b) of the Rules of Practice and Procedure, responses to FEA's Motions were due no later than March 25, 2020.

15. On March 12, 2020, AARP filed a Petition for Leave to Intervene (AARP's Petition). AARP states that it is a national nonprofit organization with 670,000 members in Colorado, many of whom may be residential natural gas customers of Public Service. AARP's Petition contains no information about conferral on its motion with counsel for Public Service, Staff, or for OCC, as required by Rule 1400(a) of the Rules of Practice and Procedure. AARP's Petition was served electronically on counsel for Public Service, Staff, and OCC.¹² Pursuant to Rule 1400(b), responses to AARP's Petition were due no later than March 26, 2020.

16. On March 12, 2020, the International Brotherhood of Electrical Workers, Local 111 (Local 111), filed a Petition for Leave to Intervene (IBEW's Petition). Local 111 states that it is the collective bargaining representative for approximately 1900 Public Service employees. IBEW's Petition contains no information about conferral on its petition with counsel for Public Service, Staff, and OCC, as required by Rule 1400(a) of the Rules of Practice and Procedure. IBEW's Petition was served electronically on counsel for Public Service, Staff, and OCC.¹³ Pursuant to Rule 1400(b), responses to IBEW's Petition were due no later than March 26, 2020.

¹¹ FEA's Motions, Certificate of Service at page 14 and E-Filings Certificate of Service.

¹² AARP's Petition, Certificate of Service at page 3 and E-Filings Certificate of Service. Rule 1401(c), 4 CCR 723-1, requires requests for permissive intervention to be by motion, not petition. AARP's Petition will be construed as a motion for permissive intervention.

¹³ IBEW's Petition, Certificate of Service at page 3, and E-Filings Certificate of Service. Under Rule 1401(c), 4 CCR 723-1, IBEW's Petition will be construed as a motion for permissive intervention.

17. On March 16, 2020, Energy Outreach Colorado (EOC) filed a Motion to Intervene and Entry of Appearance (EOC's Motion). EOC states that it is a Colorado nonprofit corporation, whose mission is to ensure that low-income Colorado households can meet their home energy needs.¹⁴ EOC's Motion contains no information about conferral on its motion with counsel for Public Service, Staff, and OCC, as required by Rule 1400(a) of the Rules of Practice and Procedure. EOC's Motion was served electronically on counsel for Public Service, Staff, and OCC.¹⁵ Pursuant to Rule 1400(b), responses to EOC's Intervention would be due on or before March 30, 2020.

18. On March 18, 2020, Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (BH Colorado Gas) filed a Motion to Permissively Intervene (BH Colorado Gas' Motion). BH Colorado Gas is a natural gas distribution company providing gas distribution, transmission, and transportation services to its retail customers throughout Colorado. BH Colorado Gas states that it obtains delivery of a portion of its natural gas system supplies over Public Service's facilities. Public Service is the upstream pipeline provider for BH Colorado Gas' North Central GCA area and one of the upstream pipeline providers for its Southwestern GCA area.¹⁶ BH Colorado Gas' Motion contains no information regarding conferral about its motion with counsel for Public Service, Staff, or OCC, as required by Rule 1400(a) of the Rules of Practice and Procedure.¹⁷ BH Colorado Gas' Motion was served electronically on counsel for Public Service, Staff, and OCC.¹⁸ Pursuant to Rule 1400(b) of the

¹⁴ EOC's Motion, ¶ 1 at page 1.

¹⁵ EOC's Motion, Certificate of Service at pages 6 and 7.

¹⁶ BH Colorado Gas' Motion, ¶ 1 at page 1.

¹⁷ Rule 1400(a), 4 CCR 723-1.

¹⁸ BH Colorado Gas' Motion, Certificate of Service at page 5, and E-Filings Certificate of Service.

Rules of Practice and Procedure, responses to BH Colorado Gas' Motion would be due no later than April 1, 2020.¹⁹

19. On March 20, 2020, WoodRiver Energy, LLC (WoodRiver) filed a Motion to Intervene (WoodRiver's Motion). WoodRiver, a Colorado limited liability company, states that it is a transportation customer of Public Service.²⁰ WoodRiver's Motion contains no information regarding conferral about its motion with counsel for Public Service, Staff, or OCC, as required by Rule 1400(a) of the Rules of Practice and Procedure. WoodRiver's Motion was served electronically on counsel for Public Service, Staff, and OCC.²¹ Pursuant to Rule 1400(b), responses to WoodRiver's Motion would be due on or before April 3, 2020.

20. On March 23, 2020, Colorado Natural Gas (CNG) filed a Motion to Permissively Intervene (CNG's Motion). CNG states that it is a natural gas local distribution company providing both retail distribution and transportation services to customers in several service territories throughout Colorado. CNG purchases a portion of its natural gas system supply delivered from Public Service at several delivery points.²² CNG's Motion contains no information regarding conferral about its motion with counsel for Public Service, Staff, or OCC, the Parties at the time of filing CNG's Motion, as required by Rule 1400(a) of the Rules of Practice and Procedure. CNG's Motion was served electronically on counsel for Public Service, Staff, and OCC.²³ Pursuant to Rule 1400(b), responses to CNG's Motion would be due on or before April 6, 2020.

¹⁹ Rule 1400(b), 4 CCR 723-1.

²⁰ WoodRiver's Motion, ¶ 3 at page 1.

²¹ WoodRiver's Motion, Certificate of Service at page 3, and E-Filings Certificate of Service.

²² CNG's Motion, ¶ 1 at page 1.

²³ CNG's Motion, Certificate of Service at page 3, and E-Filings Certificate of Service.

21. On March 23, 2020, Climax Molybdenum Company (Climax) filed a Motion to Intervene Permissively (Climax's Motion). Climax operates the Climax and Henderson molybdenum mines and related facilities near Leadville and Empire, Colorado, respectively. Climax states that it receives interruptible natural gas transportation service from Public Service under Schedule TI at its respective facilities and is a substantial customer of Public Service.²⁴ Climax's Motion contains no information about regarding conferral about its motion with counsel for Public Service, Staff, or OCC, the Parties at the time of filing Climax's Motion, as required by Rule 1400(a) of the Rules of Practice and Procedure. Climax's Motion was served electronically on counsel for Public Service, Staff, and OCC.²⁵ Pursuant to Rule 1400(b), responses to Climax's Motion would be due on or before April 6, 2020.

22. All interested persons seeking permissive interventions are represented by counsel who are, or purport to be, licensed to practice law in Colorado.²⁶

23. Decision No. R20-0145-I contained a number of procedural advisements to the Parties, as well as other interested persons that might file motions for permissive intervention pleadings (*i.e.*, putative parties), including the following:

42. **The Parties (and putative parties) are advised, and are on notice, that they must be familiar with, and abide by, the Rules of Practice and Procedure, 4 CCR 723-1. ...**

43. **The Parties (and putative parties) are advised, and are on notice, that filings must comply ... with the other requirements found in the Commission's**

²⁴ Climax's Motion, ¶¶ 1 and 2 at page 1.

²⁵ Climax's Motion, Certificate of Service at page 5, and E-Filings Certificate of Service.

²⁶ AARP is represented by an attorney with a Pro Bono registration number. FEA's Motions were signed by a Colorado-licensed attorney, who seeks to be excused from appearances in this Proceeding. FEA's out-of-state attorneys seek admission *pro hac vice*, but the Commission has not yet received from the Colorado Supreme Court proof of these attorney's *pro hac vice* registrations.

rules pertaining to filings made with the Commission.²⁷ (Emphasis in the original.)

The ALJ expects that all the Parties, the putative parties, and their counsel will follow and will comply with the Rules of Practice and Procedure in this Proceeding. All counsel for the interested persons seeking permissive intervention have failed to follow these advisements.

24. The requirement in Rule 1400(a) for conferral with opposing counsel about motions, including motions for permissive intervention, is a fundamental rule of pleading practice before this Commission and benefits the efficiency of litigating cases. If after conferral between counsel a motion is reported to be unopposed, for example, the motion may be granted without delay. Counsel's failure to comply with the conferral requirement, if a motion turns out to be unopposed, results in the ALJ awaiting the filing of responses and in delaying the ALJ's decision adjudicating the motion.

25. The ALJ is disappointed that all the attorneys who filed motions for permissive intervention have ignored this important requirement for filing motions with the Commission. The ALJ is even more disappointed that some of those counsel have practiced before this Commission for many years under the requirements of Rule 1400(a) of the Rules of Practice and Procedure.

26. The ALJ also expects out-of-state counsel, who may seek *pro hac vice* admission to practice before the Commission in this Proceeding, to be familiar with and to follow the requirements in our Rules of Practice and Procedure. Merely asserting that an out-of-state attorney has reviewed the Commission's rules is not sufficient; counsel must comply with all of our rules. Failure by such out-of-state counsel to follow the requirements in the Commission's rules may bear unfavorably on their *pro hac vice* motions.

²⁷ Decision No. R20-0145-I, ¶¶ 42 and 43 at page 14.

27. In all pleadings filed and, in any hearings held, in this Proceeding, counsel for the Parties are required to comply with the requirements of the Rules of Practice and Procedure. Failure of counsel to follow this advisement may result in consequences adverse to their clients' interests.

II. FINDINGS AND CONCLUSIONS.

A. Ruling on the Merits of Motions for Permissive Intervention.

1. Standards for Permissive Intervention.

28. Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, states the minimum standards for permissive intervention in Commission proceedings and requires that:

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. ... 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.

(Emphasis added.)

29. Rule 1401(c) is similar to Colorado Rule of Civil Procedure 24(a), which provides that, even if a party seeking intervention has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties.²⁸ This principle is true even if the party seeking intervention will be bound by the case's judgment.²⁹ The test for

²⁸ *Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass'n.*, 214 P.3d 451, 457 (Colo. App. 2008).

²⁹ *Denver Chapter of the Colo. Motel Ass'n v. City & County of Denver*, 374 P.2d 494, 495-496 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city).

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.³⁰

30. In addition, Rule 1401(c), 4 CCR 723-1, requires additional discussion for certain motions purporting to represent consumer interests:

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.

Pursuant to § 40-6.5-104(1), C.R.S., the OCC has a statutory mandate to represent the interests of residential, agricultural, or small business ratepayers. “[I]f there is a party charged by law with representing [the individual’s] interest, then a compelling showing should be required to demonstrate why this representation is not adequate.”³¹

31. The Commission has the authority to determine how to conduct its proceedings. Pursuant to § 40-6-101(1), C.R.S., the Commission “shall conduct its proceedings in such manner as will best conduce the proper dispatch of business and the ends of justice.” The Commission may look to the Colorado Administrative Procedure Act (§ 24-4-101 *et seq.*, C.R.S.) for guidance. Section 24-4-105, C.R.S. “grants substantial discretion” to agencies such as the Commission “to control the scope and presentation of evidence” in a proceeding.³² The Colorado Administrative Procedure Act provides among other things, that a hearing officer (or the ALJ in

³⁰ *Id.*; *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

³¹ *Feigin v. Alexa Group, Ltd.*, 19 P.3d 23, 26 (Colo. 2001).

³² *Williams Natural Gas Company v. Mesa Operating Limited Partnership*, 778 P.2d 309 (Colo. App. 1989).

Commission proceedings) shall “regulate the course of the hearing,” “issue appropriate orders that shall control the subsequent course,” and “dispose of motions to intervene.” “Through statute, rule, and sound judicial discretion, the Commission entrusts its ALJs to manage cases independently.”³³

32. The Commission and its ALJs must determine how to conduct a proceeding efficiently and with justice when the Commission must issue its decision within a suspension period of 250 days, as in this rate case. In this Proceeding, therefore, the ALJ will strictly, but fairly, control the scope of issues and the presentation of evidence by Public Service and the intervenors, in order to conduct this Proceeding, as required by § 40-6-101(1), C.R.S., “in such manner as will best conduce the proper dispatch of business and the ends of justice.”

33. The Commission has the discretion to grant or to deny permissive interventions.³⁴ Pursuant to Rule 1401(c), that discretion is based upon the ALJ’s determination of whether the person seeking permissive intervention has satisfied the requirements of Rule 1401(c). Pursuant to Rule 1500, 4 CCR 723-1, the person seeking leave to intervene by permission bears the burden of proof with respect to the relief sought and their motion’s compliance with the requirements of Rule 1401(c).³⁵

2. Motions that Satisfy the Standards for Permissive Intervention.

34. Atmos is a natural gas distribution company in various service areas in Colorado and one of Public Service’s largest gas transportation customers. Atmos’ Motion asserts that the

³³ See Decision No. C19-1024 (mailed on December 19, 2019), ¶¶ 19 and 20 at page 8, in Proceeding No. 19A-0409E (Affirming ALJ’s denial of a motion for permissive intervention for failure to satisfy the standards required by Rule 1401(c)).

³⁴ *Public Service Co. v. Trigen-Nations Energy Co., L.L.P.*, 982 P.2d 316, 327 (Colo. 1999).

³⁵ Decision No. R20-0073-I (mailed on January 30, 2020), ¶ 25 at page 10, in Consolidated Proceeding Nos. 19F-0620E and 19F-0621E (Denying motions for permissive intervention for failure to satisfy the standards required by Rule 1401(c)).

requested increase in rates and allocations of Public Service's overall revenue requirement will have a direct and substantial impact on Atmos and its customers. Moreover, Atmos states that it was a party to the settlement agreement approved in Public Service's last Phase II rate case, which included a Local Distribution Company (LDC) "Stakeholder" Evaluation Process,³⁶ which is ongoing and may be affected by the cost allocation and rate design aspects of this rate case. Atmos concludes that this Proceeding may substantially affect Atmos' pecuniary or tangible interests, which cannot be adequately represented by any other party.³⁷

35. Although Atmos does not yet know the nature and quantity of evidence it would present, Atmos states that its intervention will not unduly broaden the issues in this Proceeding.³⁸

36. FEA's Motions assert that, as a substantial customer of Public Service, FEA expects its bills at Colorado locations, such as Buckley Air Force Base, to be impacted substantially by the Commission's final decision in this Proceeding. If granted intervention, FEA may present testimony regarding the reasonableness of the requested revenue increase, cost of service, and rate design. To support its permissive intervention, FEA relies upon the standards for permissive intervention in Rule 1401(c), including that the docket must substantially affect its pecuniary or tangible interests, which cannot be adequately represented by other parties. Only the Department of Defense, through the Department of the Air Force counsel, is authorized by federal statute to represent FEA in this Proceeding.³⁹

³⁶ See Decision No. R20-0046 (mailed on January 22, 2020) in Proceeding No. 19AL-0309G.

³⁷ Atmos' Motion, ¶¶ 1 and 3 at pages 1 and 2.

³⁸ *Id.*, ¶¶ 4 and 5 at page 2. The ALJ understands this statement to be a commitment by counsel for Atmos that Atmos' intervention will not unduly broaden the issues in this Proceeding

³⁹ FEA's Motions, ¶¶ 2, 3 and 4 at pp. 2-3.

37. The Motion to Appear *Pro Hac Vice* and the Motion to Excuse the Attendance of Associated Counsel, also filed by FEA on March 11, 2020 in the same pleading, will be addressed in a separate Interim Decision after the Colorado Supreme Court issues and files with the Commission proof of *pro hac vice* registration.

38. EOC's Motion asserts that, pursuant to § 40-8.5-104, C.R.S., EOC collects and disburses low-income energy assistance funds, as well as voluntary contributions from utility customers, pursuant to the Low-Income Energy Assistance Act, § 40-8.7-101, *et seq.*, C.R.S.⁴⁰ EOC is concerned about the proposed monthly bill impact for residential customers, specifically the requested increase to the residential class Service and Facilities (S&F) charge from \$12.00 to \$15.00 per month. EOC opposes Public Service's S&F charge methodology, which EOC asserts would spread approximately half of the demand-related costs allocated to the residential class to the fixed S&F charge rather than volumetric, energy-only rates. If allowed to intervene, EOC would attempt to ensure that rates for low-income customers are just, reasonable, and not disproportionately burdensome. EOC's Motion asserts that "EOC has a tangible and pecuniary interest in ensuring that its services are not required for a growing number of Colorado citizens and the needs of its constituency not expanded," and that its interests cannot be adequately represented by any other party.⁴¹

39. Although EOC does not currently know the extent and nature of evidence it would present, EOC states that its intervention will not unduly broaden the issues in or delay this Proceeding.⁴²

⁴⁰ EOC's Motion, ¶ 1 at page 1.

⁴¹ EOC's Motion, ¶¶ 4, 6, 8, and 9 at pages 2 and 3. The ALJ notes that the specific interests discussed in EOC's Motion are Phase II class cost of service allocation and rate design issues.

⁴² *Id.*, ¶¶ 10 and 11 at pages 3 and 4. The ALJ understands this statement to be a commitment by counsel for EOC that EOC's intervention will not unduly broaden the issues in, or delay, this Proceeding.

40. BH Colorado Gas, a natural gas transportation customer of Public Service, receives service under the Large Firm Transportation (TFL) customer class. In this Proceeding, Public Service proposes to increase the TFL rates by 14.8 percent. BH Colorado Gas asserts that it has a substantial interest in this proceeding, which will substantially affect BH Colorado Gas' tangible and pecuniary interests. Additionally, BH Colorado Gas states that it was a party in Public Service's last Phase II rate case and has been actively participating in the LDC Stakeholder Evaluation Process, which is ongoing and may be affected by the cost allocation and rate design aspects of this rate case. While BH Colorado Gas does not yet know the nature or quantity of any evidence that it may present, it argues that its particular interests will not be adequately represented unless it is allowed to intervene.⁴³

41. WoodRiver's Motion states that it provides gas commodity service to approximately 500 commercial and industrial customers on Public Service's gas system under applicable transportation tariffs (*i.e.*, the TFS, TFL, and TI rate schedules) for transportation service. WoodRiver asserts that it will be affected by this Proceeding, and the proposed increase in the gas transportation rates will substantially affect WoodRiver's pecuniary or intangible interests, which are not adequately represented by any other party in this Proceeding.⁴⁴

42. WoodRiver does not know the nature or quantity of evidence, if any, that it may present, but WoodRiver states that its participation will not unduly delay or broaden the scope of this Proceeding.⁴⁵

⁴³ BH Colorado Gas' Motion, ¶¶ 3 through 6 at page 2.

⁴⁴ WoodRiver's Motion, ¶¶ 3, 4, and 5 at pages 1 and 2.

⁴⁵ *Id.*, ¶ 6 at page 2. The ALJ construes this statement to be a commitment by counsel for WoodRiver that WoodRiver's intervention will not unduly broaden the issues in, or delay, this Proceeding.

43. CNG's Motion asserts that the requested rate increase and the allocation of Public Service's revenue requirement will have a direct and substantial impact on CNG and its customers. According to CNG, the outcome of this proceeding may substantially affect CNG's, and its customers' pecuniary or tangible interests, which cannot be adequately represented by any other party. Moreover, CNG was a party in Public Service's last Phase II rate case and has been actively participating in the LDC Stakeholder Evaluation Process, which may be affected by the Phase II portion of this Proceeding.⁴⁶

44. CNG does not yet know the nature and quantity of evidence that it may present, but CNG states that its intervention will not unduly broaden the issues in this Proceeding.⁴⁷

45. Climax's Motion asserts that for Schedule TI, under which Climax takes interruptible transportation service, Public Service proposes significant increases to the Usage (*i.e.*, transportation) Charge and the PSIA. Climax argues that Public Service proposes to increase the Usage Charge and to reduce the PSIA (due to the roll-in) which results in a combined net increase of 15.7 percent in the cost of Climax's TI transportation service. Climax maintains, therefore, that the Commission's decision in this case will directly and substantially affect Climax's natural gas transportation costs to mine and mill molybdenum, and will substantially affect Climax's tangible and pecuniary interests. Climax asserts that, because its facilities are unique among Public Service's transportation customers, its interests will not be adequately represented unless Climax is allowed to intervene.⁴⁸

⁴⁶ CNG's Motion, ¶¶ 3 and 4 at pages 1 and 2.

⁴⁷ *Id.*, ¶¶ 5 and 6 at page 2. The ALJ understands this statement to be a commitment by counsel for CNG that CNG's intervention will not unduly broaden the issues in this Proceeding.

⁴⁸ Climax's Motion, ¶¶ 6 and 7 at pages 2 and 3.

46. Climax does not yet know the nature and quantity of evidence that it may present, but Climax states that its participation will not unduly broaden the issues in this Proceeding.⁴⁹

47. Atmos, EOC, FEA, BH Colorado Gas, WoodRiver, CNG, and Climax do not specifically represent residential consumers, agricultural consumers, or small business consumers.⁵⁰ Atmos, EOC, FEA, BH Colorado Gas, WoodRiver, CNG, and Climax have demonstrated that this Proceeding may substantially affect each of their pecuniary or tangible interests, as contemplated by Rule 1401(c). Each also has demonstrated that its interests would not otherwise be adequately represented by other parties. The ALJ finds that the motions for permissive intervention filed by Atmos, EOC, FEA, BH Colorado Gas, WoodRiver, CNG, and Climax each satisfies the standards for permissive intervention required by Rule 1401(c), and their permissive interventions will be granted.

48. The Parties to this Proceeding are Public Service, Staff, OCC, CEO, Atmos, EOC, FEA, BH Colorado Gas, WoodRiver, CNG, and Climax.

3. Motions that Fail to Satisfy the Standards for Permissive Intervention.

49. It is important for interested persons, who seek permissive intervention, in order to participate in Commission proceedings, to understand what is necessary to demonstrate in accordance with Rule 1401(c) to be allowed to intervene permissively.⁵¹

⁴⁹ *Id.*, ¶¶ 8 and 9 at page 3. The ALJ understands this statement to be a commitment by counsel for Climax that Climax's intervention will not unduly broaden the issues in this Proceeding.

⁵⁰ EOC does not specifically represent residential customers. While EOC's concerns include the proposed residential S&F charges and reasonableness of rates for low-income customers, EOC's specific interest is its statutorily-mandated administration of energy assistance contributions. *See* EOC's Motion, ¶¶ 4, 6, and 9 at pages 2 and 3.

⁵¹ Decision No. R19-0689-I (mailed on August 15, 2019), ¶ 28 at page 7, in Proceeding No. 19AL-0290E.

50. An initial intervention pleading, filed pursuant to Rule 1401(c), must show that the movant has a tangible or pecuniary interest and, if filed by or on behalf of residential or other constituents of the OCC, must explain why its concerns could not be adequately represented by the OCC. If the movant fails to satisfy the requirements of Rule 1401(c) and is denied permissive intervention, it should not be permitted to make new arguments through a motion for “modification” or “reconsideration” when the second pleading is, in essence, a new request for intervention that goes beyond the initial pleading. Moreover, a past intervention by movants in a previous proceeding does not entitle any entity to intervene in a subsequent case.⁵²

51. AARP’s Petition, AARP’s initial intervention pleading, argues that its interest, and its grounds for intervention, relate to the proposed, substantial increases in Public Service’s natural gas rates for its residential customer class, including (without explanation) other proposed customer service charges, as well as “potential concerns” related to any rate design changes not yet proposed. The Petition states clearly that AARP desires to advocate on behalf of residential natural gas customers to help ensure that their rates are no higher than a just and reasonable level. AARP specifically asserts that its interest relates to how the proposed rate increase may directly and adversely impact residential customers who are aged 50 and over, who AARP argues are generally more vulnerable to increases in energy prices. AARP asserts that its specific interest in this proceeding is not adequately represented by other parties, but AARP does not discuss why or how its concerns about residential customers and rates is not adequately represented by the OCC.⁵³

⁵² *Id.*, ¶¶ 11, 12, 21, 25, 32, and 66 at pages 3-4, 5-7, and 16; affirmed by the Commission in Decision No. C19-0757 (mailed on September 18, 2019) in Proceeding No. 19AL-0290E.

⁵³ AARP’s Petition, ¶¶ 2 and 3 at page 2.

52. AARP's Petition fails to demonstrate adequately that this Proceeding may substantially affect the pecuniary or tangible interests of AARP (or those it may represent), as required by Rule 1401(c). When a prospective party argues within its intervention filing that its members are residential customers of a utility, as AARP did here, it is reasonable for the Commission and its ALJs to expect the movant to 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, as required by Rule 1401(c).⁵⁴ However, AARP's Petition utterly fails to discuss, let alone demonstrate, that its interests and concerns about the proposed increases to rates and charges for residential customers, including the customers aged 50 and over, will not be represented adequately by the OCC. The ALJ finds that AARP has failed to satisfy the requirements in Rule 1401(c) to demonstrate that it should be granted permissive intervention. AARP's Petition will be denied.

53. So that AARP may provide the Commission its legal arguments on the issues about which it is concerned, the ALJ *sua sponte* grants AARP leave to participate in this Proceeding as an *amicus curiae*, pursuant to Rule 1200(c) of the Rules of Practice and Procedure, 4 CCR 723-1.

54. IBEW's Petition states that Local 111 represents Public Service employees regarding their wages, hours and other terms and conditions of employment, under the National Labor Relations Act. Local 111 argues that it is familiar with the gas operations of Public Service

⁵⁴ Decision No. C19-0757, ¶ 24 at page 10, in Proceeding No. 19AL-0290E.

and with the pension and retiree health benefits of Public Service's employees and retirees. Local 111 asserts that it wishes to be a party to address "these concerns," without explaining what its concerns are and how its concerns are related to issues in this rate case filing.⁵⁵

55. Local 111's initial intervention pleading, IBEW's Petition, states that Local 111 represents Public Service employees regarding their wages, hours and other terms and conditions of employment, under the National Labor Relations Act. Local 111 argues that it is familiar with the gas operations of Public Service and with the pension and retiree health benefits of Public Service's employees and retirees. Local 111 asserts that it wishes to be a party to address "these concerns," without explaining what its concerns are and how its concerns are related to issues in this rate case filing.⁵⁶

56. So that Local 111 may provide the Commission with its legal arguments on the issues about which it is concerned, the ALJ *sua sponte* grants Local 111 leave to participate in this Proceeding as an *amicus curiae*, pursuant to Rule 1200(c) of the Rules of Practice and Procedure, 4 CCR 723-1.

57. Other procedural matters may be addressed in future interim decisions.

III. **ORDER**

A. **It Is Ordered That:**

1. The Notice of Intervention by Right filed by the Colorado Energy Office on March 23, 2020 is acknowledged.

2. The Motion to Permissively Intervene filed by Atmos Energy Corporation on March 6, 2020, shall be granted, consistent with the findings and conclusions in this Decision.

⁵⁵ IBEW's Petition, ¶¶ 1 through 4 at pages 1 and 2.

⁵⁶ IBEW's Petition, ¶¶ 1 through 4 at pages 1 and 2.

3. The Motion to Intervene filed by the Federal Executive Agencies on March 11, 2020 shall be granted, consistent with the findings and conclusions in this Decision.

4. The Motion to Intervene filed by Energy Outreach Colorado on March 16, 2020 shall be granted, consistent with the findings and conclusions in this Decision.

5. The Motion to Permissively Intervene filed by Black Hills Colorado Gas, Inc., doing business as Black Hills Energy on March 18, 2020 shall be granted, consistent with the findings and conclusions in this Decision.

6. The Motion to Intervene filed by WoodRiver Energy, LLC on March 20, 2020 shall be granted, consistent with the findings and conclusions in this Decision.

7. The Motion to Permissively Intervene filed by Colorado Natural Gas on March 23, 2020, shall be granted, consistent with the findings and conclusions in this Decision.

8. The Motion to Intervene Permissively filed by Climax Molybdenum Company on March 23, 2020 shall be granted, consistent with the findings and conclusions in this Decision.

9. The Petition for Leave to Intervene filed by AARP on March 12, 2020 is denied, consistent with the findings and conclusions in this Decision.

10. AARP is granted leave to participate in this Proceeding as an *amicus curiae*, pursuant to Rule 1200(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

11. The Petition for Leave to Intervene filed by the International Brotherhood of Electrical Workers, Local 111 (Local 111) on March 12, 2020 is denied, consistent with the findings and conclusions in this Decision.

12. Local 111 is granted leave to participate in this Proceeding as an *amicus curiae*, pursuant to Rule 1200(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

13. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director