

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
VACATING THE PREHEARING
CONFERENCE; ESTABLISHING
PROCEDURAL SCHEDULE;
SETTING HEARING DATES;
AND NOTICE OF HEARING**

Mailed Date: April 6, 2020

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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.

2. 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.

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

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.

4. 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. 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.

5. 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.

6. Notices of interventions by right were acknowledged for Trial Staff of the Colorado Public Utilities Commission (Staff), filed on February 28, 2020 (*see* Decision No. R20-0145-I); the Colorado Office of Consumer Counsel (OCC), filed on March 9, 2020 (*see* Decision No. R20-0179-I, mailed on March 17, 2020); and the Colorado Energy Office (CEO), filed on March 23, 2020 (*see* Decision No. R20-0208-I, mailed on April 1, 2020).

7. Decision No. R20-0208-I granted motions for permissive intervention filed on March 6, 2020 by Atmos Energy Corporation (Atmos); on March 11, 2020 by the Federal Executive Agencies (FEA); on March 16, 2020 by Energy Outreach Colorado (EOC); on March 18, 2020 by Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (BH Colorado Gas); on March 20, 2020 by WoodRiver Energy, LLC (WoodRiver); on March 23, 2020, by Colorado Natural Gas (CNG); and on March 23, 2020 by Climax Molybdenum Company (Climax).

8. Decision No. R20-0208-I also denied the Petition for Leave to Intervene filed by AARP on March 12, 2020, and the Petition for Leave to Intervene filed on March 12, 2020 by the International Brotherhood of Electrical Workers, Local 111 (Local 111), on the grounds that

each Petition failed to satisfy the requirements in Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, to demonstrate adequately that the movants should be granted permissive interventions.² AARP and Local 111 were, however, *each* granted 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.

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

B. Unopposed Joint Motion.

10. On March 31, 2020, Public Service filed an Unopposed Joint Motion to Adopt Proposed Procedural Schedule, to Adopt Procedures for Discovery and Confidential Information, to Vacate Prehearing Conference, and to Waive Response Time (Joint Motion). The Joint Motion is joined by the Parties to this Proceeding and is unopposed.³ The Joint Motion seeks an interim order adopting the proposed consensus procedural schedule and provisions for discovery and confidential information, as well as a waiver of response time. Finally, the Joint Motion asks that the prehearing conference set for April 21, 2020 at 1:30 p.m. be vacated.

² Rule 1401(c), 4 CCR 723-1, requires requests for permissive intervention to be by motion, not petition. The petitions for Leave to Intervene filed by AARP and Local 111 were construed by the ALJ as motions for permissive intervention.

³ The *Amici Curiae*, AARP and Local 111, although not Parties, also joined the Joint Motion.

II. FINDINGS AND CONCLUSIONS.

A. Procedural Schedule and Evidentiary Hearing Dates.

11. 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 Deadline
Answer Testimony & Attachments	May 13, 2020
Rebuttal & Cross-answer Testimony & Attachments	June 8, 2020
Prehearing Motions	June 15, 2020
Corrections to Pre-filed Testimony and Attachments	June 19, 2020
Settlement Agreements	June 22, 2020
Matrix of Order of Witnesses, Order of Cross-examination, and Estimated Cross-examination Times	June 30, 2020 ⁴
Deadline for all Parties to file final electronic versions of all Hearing Exhibits	To be set by separate decision
Deadline for Objections to the admissibility of any pre-filed Hearing Exhibits	June 30, 2020
Evidentiary Hearing (9 days)	July 7 – 10 and 13 – 17, 2020
Statements of Position (Filed Simultaneously)	July 31, 2020
Technical Conference Prior to Issuance of Recommended Decision on the Merits	To be scheduled at the discretion of the ALJ
250-day suspension period expires, unless extended by amended Advice Letter & Tariff filing	November 12, 2020

⁴ Since the ALJ has set the Hearing for July 7 through 10 and 13 through 17, 2020, the ALJ has adjusted this date to June 30, 2020, one week before the first day of hearing.

12. No final prehearing conference will be required, unless requested by a motion filed by a Party.

13. If a settlement agreement is negotiated and filed by the June 22, 2020 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 11, and requesting approval of the settlement agreement and settled rates and tariffs.

14. In general rate cases, the Commission usually schedules one or more in-person public comment hearings to take oral comments from customers of the utility. The impacts of the continuing COVID-19 pandemic in Colorado may require a modification to that practice in this Proceeding. As of the date this Decision has been issued, it is unknown how long Governor Jared Polis' Declaration of Emergency and Stay-at-Home Order in response to the COVID-19 pandemic will be in effect. The Commission's responses to the impacts of the continuing COVID-19 pandemic on administrative hearings and public comment hearings continue to be addressed on a case-by-case basis. To the extent public comment hearings can be scheduled at a physical location, the ALJ will schedule one or more public comment hearings in different cities in Public Service's gas service territory. If Colorado's response to the COVID-19 pandemic does not allow for in-person public comment hearings, the Parties have deferred to the ALJ regarding the timing and method of receiving public comments, which the Parties agreed could be provided telephonically, via the Commission's e-filing system, or in another appropriate manner (*e.g.*, by video/audio conference). The ALJ notes that a large number of public comments have already

been filed through the e-filing system. The ALJ will issue a future Interim Decision regarding the date(s) and manner of conducting any public comment hearings.

B. Stipulated Discovery Procedures.

15. The Parties have agreed, and the ALJ finds, that 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) The discovery cut-off deadlines stated in Rule 1405(d) 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 testimony and attachments shall be served no later than five business days prior to the first day of the hearing.
- c) Service of discovery shall be filed through electronic mail. Public Service’s electronic mail service shall provide access to a link to an external SharePoint site that provides access to Public Service’s electronic versions of discovery responses. The ALJ finds that this modification is appropriate because it maximizes the time Parties will be allowed to respond to discovery requests and promotes efficiency and cost savings.
- d) With the exception of any supplemental or corrected responses that may be subsequently served, responses to an individual set of discovery requests, except for attachments, shall 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 shall be provided in a single document on the due date.
- e) The Parties shall provide workpapers supporting their Answer, Rebuttal, or Cross-Answer Testimony within three business days of filing of such testimony.

⁵ “Discovery requests” include discovery requests, data requests, requests for admissions, and Staff audit requests.

- f) In compliance with Rules 1101(g) and 1101(h), all confidential and highly confidential documents and discovery responses (and any requests containing confidential or highly confidential information) shall be served on counsel for the Parties that have executed the appropriate non-disclosure agreements (this includes counsel's authorized administrative and para-professional staff who have executed the appropriate non-disclosure agreements) and, if authorized by counsel for the Parties as permitted by Rule 1101(h) or any Highly Confidential Protective Order issued by the ALJ, may also be disclosed to a Party's experts or advisors, who have executed the appropriate non-disclosure agreements. Any member of Commission Staff may have access to any confidential or highly confidential information made available under the Commission's Standards of Conduct. The manner of service of discovery requests and responses containing confidential and highly confidential documents and information should be electronically unless such requests and responses are too voluminous to use that method, in which event service will be at the discretion of the serving counsel.

16. The ALJ adds the following requirements related to discovery procedures, all of which are consistent with custom and practice before this Commission.

17. 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.

18. 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.

19. 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 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.

C. Confidential and Highly Confidential Information.

20. The Parties have agreed to, and the ALJ adopts for this Proceeding, the following requirements relating to confidential and highly confidential information.

21. Unless modified by the ALJ, Rules 1100 and 1101 of the Rules of Practice and Procedure, 4 CCR 723-1, shall govern the treatment of confidential information⁶ and highly confidential information⁷ for which extraordinary protection has been sought.

22. Rules 1100 and 1101 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 that claims 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 of 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 information and documents.

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:

- a) if an entire document is not confidential, each portion that contains confidential information shall be clearly marked (*e.g.*, shaded), and each page 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 shall be clearly marked (*e.g.*, shaded), and each page will state in the heading: “This page contains highly confidential information as shown;”

⁶ As used in this Decision, “confidential information” means information that a Party claims is confidential and that is filed under seal with the Commission.

⁷ As used in this Decision, “highly confidential information” means information that, in this proceeding, the ALJ has determined is highly confidential and that is subject to an order granting extraordinary protection.

- c) if the same page contains both confidential information *and* highly confidential information, the highly confidential information shall be marked differently from the confidential information (*e.g.*, by use of different color of shading), and each page shall 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, shall identify in the heading each page on which that information appears, and the confidential information or highly confidential information, or both, shall be redacted.

24. 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.

D. Other Procedural Matters.

25. A future Interim Decision will address conduct of the evidentiary hearing using electronic Hearing Exhibits and will assign Hearing Exhibit number blocks to the Parties to this Proceeding.

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

III. ORDER

A. It Is Ordered That:

1. The Unopposed Joint Motion to Adopt Proposed Procedural Schedule, to Adopt Procedures for Discovery and Confidential Information, to Vacate Prehearing Conference, and to Waive Response Time (Joint Motion), filed by Public Service Company of Colorado on March 31, 2020, shall be and is granted, consistent with the findings and conclusions in this Decision.

2. Because it is unopposed, response time to the Joint Motion is waived.

3. The prehearing conference scheduled for April 21, 2020 at 1:30 p.m. shall be and is vacated.

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

DATES: July 7 through 10 and 13 through 17, 2020

TIMES: 9:00 a.m. (Hearings on July 8 and 15, 2020 will start at 10:30 a.m.)

PLACE: Hearing Room A (Hearing on July 10, 2020 may be in Hearing Room B)
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado⁸

5. Consistent with the findings and conclusions in this Decision, the procedural schedule, as stated in Paragraphs II.A.11 through 14 of this Decision, is adopted and shall be followed in this Proceeding.

6. Consistent with the findings and conclusions in this Decision, the procedures and deadlines for discovery, as stated in Paragraphs II.B.15 through 19 of this Decision, are adopted and shall be followed in this Proceeding.

7. Consistent with the findings and conclusions in this Decision, the procedures for confidential and highly confidential information, as stated in Paragraphs II.C.20 through 24 of this Decision, are adopted and shall be followed in this Proceeding.

8. 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 requirements and directives adopted herein.

⁸ If the Commission's responses to the COVID-19 pandemic do not allow for an in-person evidentiary hearing, the ALJ will work with counsel for the Parties to find a solution to holding the hearing that will be consistent with Governor Polis' then-current public health advisories to prevent the spread of COVID-19.

9. 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