

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
GRANTING VERIFIED MOTION
TO APPEAR *PRO HAC VICE***

Mailed Date: June 23, 2020

I. STATEMENT

1. This Interim Decision grants, consistent with the discussion below, the Verified Motion to Appear *Pro Hac Vice* of Major Scott L. Kirk, Captain Robert J. Friedman, and Thomas A. Jernigan (Verified Motion), as counsel for Intervenor Federal Executive Agencies (FEA).

A. Procedural History.

2. 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 natural gas rate proceeding.

3. The effective date of the tariff sheets filed with Advice Letter No. 961-Gas have been suspended for a total of 250 days until November 12, 2020, pursuant to § 40-6-111(1)(b), C.R.S. (2019).¹

¹ See Decision No. C20-0112 (mailed on February 20, 2020) and Decision No. R20-0145-I (mailed on March 5, 2020).

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

5. Decision No. R20-0208-I, (mailed on April 1, 2020) *inter alia* granted the Motion to Intervene filed by FEA on March 11, 2020, finding that it satisfied the standards for permissive interventions required by Rule 1401(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. FEA then became a party.

B. Motion to Appear *Pro Hac Vice*.

6. An attorney who is not licensed to practice law in Colorado must be granted permission to appear *pro hac vice* in a Commission proceeding. Rule 1201(a) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, governs the admission of out-of-state attorneys. Rule 1201(a) requires compliance with Colorado Rule of Civil Procedure (Colo.R.Civ.P.) 205.4, which itself expressly incorporates Colo.R.Civ.P. 205.3.

7. As pertinent here, Colo.R.Civ.P. 205.3(2)(a) details what an out-of-state attorney must do to be permitted to appear *pro hac vice* and includes these requirements:

- a) File a verified motion with the administrative agency requesting permission to appear;
- b) Designate an associate attorney who is admitted and licensed to practice law in Colorado;
- c) File a copy of the verified motion with the Clerk of the Supreme Court Office of Attorney Registration at the same time the verified motion is filed with the administrative agency;
- d) Pay the required fee to the Clerk of the Supreme Court collected by the Office of Attorney Registration; and
- e) Obtain permission from the administrative agency for such appearance.

8. On March 11, 2020, as part of FEA's intervention pleading, FEA included the Verified Motion, requesting permission for Major Kirk, Captain Friedman, and Mr. Jernigan to

appear as *pro hac vice* counsel for FEA in this Proceeding. The Verified Motion stated that Major Kirk is a member in good standing of the Bar in the State of Hawaii; that Captain Friedman is a member in good standing of the Bar in the State of Missouri; and that Mr. Jernigan is a member in good standing of the Bar in the State of Ohio. Affidavits signed by each of Major Kirk, Captain Friedman, and Mr. Jernigan attested to satisfaction of the requirements of Colo.R.Civ.P. 205.3(2)(a) summarized above. Ms. Deborah Klein, a member of the Colorado bar, signed the Verified Motion and was designated as the associate attorney for Major Kirk, Captain Friedman, and Mr. Jernigan.²

9. Pursuant to Rule 1400(b), 4 CCR 723-1, opposing Parties had 14 days after service of the Verified Motion, or to and including March 25, 2020, to file written responses to the Verified Motions. No responses opposing the Verified Motion were filed.

10. FEA filed a copy of the Verified Motion with the Clerk of the Colorado Supreme Court on March 11, 2020. The proof of the FEA attorneys' *Pro Hac Vice* registrations from the Clerk of the Colorado Supreme Court was not filed with the Commission until June 23, 2020. The FEA attorneys have been assigned the following *Pro Hac Vice* registration numbers: Major Kirk – 20PHV6175; Captain Friedman – 20PHV6176; and Mr. Jernigan - 20PHV6177. The Proof of *Pro Hac Vice* Registrations verified that Major Kirk, Captain Friedman, and Mr. Jernigan had requested that the Colorado Supreme Court waive the \$300.00 filing fee, required by Colo.R.Civ.P. 205.3(1)(iii) and (iv), and that they have no adverse disciplinary histories.

11. The Administrative Law Judge (ALJ) has considered the Verified Motion, attached Affidavits, and the Proof of the *Pro Hac Vice* Registrations filed in this Proceeding on June 23, 2020.

² FEA's Verified Motion, ¶¶ 7 through 17 at pages 4, 5, 6, and 7; and attached Affidavits.

12. Major Kirk, Captain Friedman, and Mr. Jernigan have each satisfied the requirements of Colo.R.Civ.P. 205.4. Therefore, the ALJ will grant the Verified Motion filed by FEA and will grant permission to Major Kirk, Captain Friedman, and Mr. Jernigan to appear *pro hac vice* as attorneys in this Proceeding on behalf of FEA.

13. Colo.R.Civ.P. 205.3(4) states that, “A separate petition, fee, and order granting permission are required for each action in which the attorney appears as *pro hac vice* counsel in Colorado.” Therefore, the grant of permission in this Decision for Major Kirk, Captain Friedman, and Mr. Jernigan to appear *pro hac vice* on behalf of FEA applies only to this Proceeding.

14. As part of FEA’s intervention pleading, filed on March 11, 2020, FEA requested that Ms. Klein be excused from attendance in this Proceeding, pursuant to Colo.R.Civ.P. 205.3(3), which allows the ALJ to excuse her attendance from *pro hac vice* appearances. FEA stated that Ms. Klein will be available to consult throughout this Proceeding and the hearing with Major Kirk, Captain Friedman, and Mr. Jernigan, who are experienced rate case and regulatory attorneys. FEA asserted that excusing Ms. Klein will not prejudice any Party.³ No responses to this request were filed.

15. The ALJ finds that FEA has stated good cause, and that Ms. Klein will be excused from attendance at all *pro hac vice* appearances and hearings in this Proceeding.

³ FEA’s Verified Motion, ¶¶ 13 through 18 at pages 5 and 6.

II. ORDER

A. It Is Ordered That:

1. The Verified Motion to Appear *Pro Hac Vice* of Major Scott L. Kirk, Captain Robert J. Friedman, and Thomas A. Jernigan, filed on March 11, 2020 by the Federal Executive Agencies (FEA), is granted consistent with the discussion in this Interim Decision.

2. FEA's request that Ms. Deborah Klein be excused from attendance at all *pro hac vice* appearances and hearings in this Proceeding is granted, consistent with the discussion in this Interim Decision.

3. This Interim Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge