

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20V-0184E

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF A PARTIAL WAIVER FROM RULE 3304 REQUIRING ELECTRIC METER TESTING FOR METERS THAT WILL BE REPLACED WITHIN THE ADVANCED GRID INTELLIGENCE AND SECURITY INITIATIVE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING PETITION**

Mailed Date: August 31, 2020

I. STATEMENT AND BACKGROUND

A. Procedural History.

1. On April 28, 2020, Public Service Company of Colorado (Public Service or the Company) filed the above-captioned Petition (Petition), which Steven P. Berman verified. *See* Verification of Steven P. Berman filed May 27, 2020. The Petition seeks a partial waiver from Rule 3304(a) and (b) of the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 through 2024.

2. The Public Utilities Commission (Commission) gave public notice of the Petition on April 28, 2020. The Colorado Office of Consumer Counsel (OCC) and the Colorado Public Utilities Commission Trial Staff (Staff) both timely intervened and requested a hearing on the Petition. No one else intervened.

3. During its weekly meeting on June 17, 2020, the Commission referred this matter to an Administrative Law Judge (ALJ). Since then, the ALJ twice scheduled a prehearing

conference, with the most recent set for August 6, 2020. Decision Nos. R20-0475-I issued June 29, 2020 and R20-0481-I issued July 1, 2020.

4. On August 5, 2020, the parties filed a Joint Notice of Resolution and Withdrawal of Interventions and Motion to Vacate Prehearing Conference (Notice). The Notice states that the parties agree that the Company's Petition satisfies the requirements of Rule 1003(c) of the Rules of Practice and Procedure, 4 CCR 723-1, to obtain the requested rule waivers. Notice, ¶ 5. The Notice explains that since the Petition was filed, the parties exchanged discoverable information and engaged in ongoing discussion that resulted in an enhanced understanding of selection criteria for homogeneous lots originally approved. *Id.* at ¶ 6. It also states that the parties have reached a consensus concerning establishment of homogeneous meter testing lots and the Company's commitment to perform more rigorous testing for the new AMI/Interval meters. *Id.* As a result of this consensus, the OCC and Staff withdrew their Interventions and requests for a hearing on the Petition. *Id.* Because the Interventions are withdrawn, rendering the Petition uncontested, the Notice asks that the ALJ issue a recommended decision granting the Petition, and vacate the prehearing conference. *Id.* at ¶ 7.

5. On August 6, 2020, the ALJ granted the parties' request to vacate the prehearing conference. Decision No. R20-0575-I. The same Decision also acknowledges that the Interventions are withdrawn, and that the Petition is now uncontested.

II. RELEVANT LAW, FINDINGS, DISCUSSION, AND CONCLUSIONS.

A. Relevant Law.

1. The Commission has jurisdiction over this matter based on its very extensive and broad regulatory powers over public utilities. Colo. Const. art. XXV; §§ 40-3-101–103, C.R.S.;

Public Serv. Co. of Colo. v. Public Util. Comm'n, 350 P.2d 543, 549 (Colo. 1960) *cert. denied*, 364 U.S. 820 (1960).

2. The Commission has specific authority to grant waivers of its rules per Rule 1003, 4 CCR 723-1, for good cause shown. In deciding whether to grant a waiver of a Commission rule, the Commission may consider hardship, equity, or more effective implementation of overall policy on an individual basis, and may subject any waiver to terms and conditions it deems appropriate. Rule 1003(a), 4 CCR 723-1. Waivers requested outside of an active proceeding must be made by filing a petition. Request for a waiver of a Commission rule must include a: citation to the specific paragraph of the rule sought to be waived; statement of the specific waiver requested; statement of facts and circumstances justifying the waiver; statement regarding the duration of the request and explaining the specific date or event that will terminate it; statement on whether the requested waiver is partial or full; and any other information required by rule. Rule 1003(c), 4 CCR 723-1.

3. When exercising any power granted to it, the Commission must give the public interest “first and paramount consideration.” *Public Serv. Co. of Colo.*, 350 P.2d at 549.

4. The proponent of an order carries the burden of proof by a preponderance of the evidence that the requested relief should be granted. § 24-4-105(7), C.R.S.; Rule 1500, 4 CCR 723-1. The preponderance standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colo. Dep’t of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden when the evidence, on the whole, tips in favor of that party. *Schocke v. Dep’t of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

5. Based on the foregoing, the ALJ considers whether the preponderance of the evidence establishes that the Petition meets the requirements of Rule 1003(c), 4 CCR 723-1, and whether granting the waivers is in the public interest.

B. Findings, Discussions, and Conclusions.

6. Because the Petition is unopposed, verified, is supported by sufficient facts, and no hearing is requested or required, the ALJ will decide whether to approve the Petition based on the record, without a hearing. Rule 1403(a), 4 CCR 723-1.

7. The Petition seeks a partial waiver from the requirement that a utility test or arrange testing of service meters as required by Rule 3304(a) 4 CCR 723-3. It also seeks a partial waiver of Rule 3304(b)'s requirement that it file an application for approval of a sampling program. As grounds for the Petition, the Company explains that it will be replacing its legacy electric meters and meters that are read manually with electric meters compatible with the Company's advanced metering infrastructure solution starting in 2021 through 2024. Petition, 1-2. These efforts are part of the Company's Advanced Grid Intelligence and Security initiative, referenced in Proceeding No. 16A-0588E. *Id.* at 1. Given that these meters will be replaced by 2024, the Company sees an opportunity to capitalize on labor efficiency and cost savings by not testing the relevant meters. The Company estimates cost savings of approximately \$656,331 resulting from labor efficiency gains between 2020 and 2023.¹ *Id.* at 4-5. Because the meters will be replaced by 2024, Public Service requests the waiver through 2024. *Id.* at 3.

6. The Company currently maintains 1,490,908 meters within its electric meter sampling program. *Id.* at 3. Public Service states that the majority of the meter testing lots are

¹ This amounts to approximately \$200,000 a year in savings. Petition at 3-4.

currently meeting acceptance criteria. *Id.* Specifically, the results of the 2019 random sample test program cycle show that only two of 84 of the testing lots did not meet acceptance criteria, but those will be replaced by 2024. *Id.* And, even if the lots continue to present issues, they cannot come into failed status until at least 2025, which is after they are slated to be replaced. *Id.* at 4.

8. Based upon the record, the ALJ concludes that the preponderance of the evidence establishes that the Company's Petition satisfies the requirements of Rule 1003(c), 4 CCR 723-1, and that granting the requested waivers is in the public interest, particularly given the potential cost savings discussed above. The ALJ also concludes that granting the requested waivers allows for a more effective implementation of overall policy on an individual basis.

9. The ALJ transmits the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order to the Commission as provided under § 40-6-109, C.R.S.

II. ORDER

A. The Commission Orders That:

1. Public Service Company of Colorado's above-captioned Petition is granted.
2. Proceeding No. 20V-0184E is closed.
3. This Recommended Decision will be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.
4. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision will be served upon the parties, who may file exceptions to it.
5. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission

upon its own motion, the recommended decision will become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

6. If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Recommended Decision are filed, they may not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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