

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0300E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF WILDFIRE MITIGATION PLAN AND WILDFIRE PROTECTION RIDER.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
ON INTERVENTIONS, SCHEDULING
A REMOTE PREHEARING
CONFERENCE, AND GIVING ADVISEMENTS**

Mailed Date: September 15, 2020

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I. STATEMENT

A. Procedural History.

1. On July 17, 2020 at 1:55 p.m., Public Service Company of Colorado (Public Service or Company) filed with the Colorado Public Utilities Commission (Commission), a

Verified Application (Application) for approval of its proposed Wildfire Mitigation Plan (WMP) and Wildfire Mitigation Rider (WPR).

2. On July 17, 2020 at 3:51 p.m., the Commission issued a Notice of Application Filed (Notice) establishing deadlines for the filing of intervention pleadings. Interested persons were to file motions to intervene within 30 days, or no later than August 17, 2020.¹ Commission Staff had seven additional days to file a notice of intervention of right.

3. The Notice, which was issued less than two hours after the Application was filed, stated that: “At the time of this Notice, the applicant **has not** filed testimony and is seeking a Commission decision within 210 days.” (Emphasis in the original.) Here the Application was not “accompanied by ... supporting testimony ... together with exhibits,” as required by § 40-6-109.5(1), C.R.S. (2019), to obtain a Commission decision within 120-days after the application is deemed complete. Instead, Public Service filed the supporting testimony and exhibits later on the same afternoon. If supporting testimony and exhibits do not accompany the filed application, § 40-6-109.5(2), C.R.S. (2019), requires the Commission to issue its decision no later than 210 days after the application was deemed complete.²

4. As background for this filing, Public Service states the following. In the wake of major events in California and in response to the growing threat of wildfires in Colorado, Public Service presented its first WMP as part of its 2019 Electric Rate Case, in Proceeding

¹ Since the 30-day deadline for interventions, pursuant to the Notice and to Rule 1401 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, fell on Sunday, August 16, 2020, the deadline was extended by operation of law until the next business day, or until Monday, August 17, 2020. Section 40-6-121, C.R.S.

² Section 40-6-109(4), C.R.S., as amended effective on May 30, 2019, in particular cases under extraordinary circumstances and after notice and hearing, allows the Commission to extend the 210-day decision deadline by an additional 130 days, for a total of 250 days. *See* Senate Bill 19-235, Section 16, at page 31; signed into law by Governor Jared S. Polis and effective on May 30, 2019.

No. 19AL-0268E. Public Service sought rate recovery of incremental distribution capital additions and distribution and transmission Operations and Maintenance (O&M) associated with its WMP activities. Public Service also requested deferred accounting treatment for its 2020 through 2023 distribution capital and distribution and transmission O&M associated with its WMP above the 2019 incremental O&M levels included in the cost of service. Negotiations in the 2019 Electric Rate Case lead to the Wildfire Settlement Agreement, which was approved by the Commission without modification in Decision No. C20-0096 (issued on February 11, 2020 in Proceeding No. 19AL-0268E). The Wildfire Settlement Agreement provided that Public Service could recover 2019 wildfire mitigation costs (\$5.7 million¹ in 2019 distribution capital additions and \$5 million² in 2019 distribution and transmission O&M) in base rates. Public Service also agreed to file, by August 1, 2020, an application for approval of its comprehensive WMP. Consistent with the Wildfire Settlement Agreement and Decision No. C20-0096, the instant Application is Public Service's updated, comprehensive WMP, as well as its request for approval of the WPR framework to enable Public Service to recover eligible costs associated with its accelerated wildfire mitigation efforts in a timely manner.³

5. In the Application, Public Service requests that the Commission: (1) approve the proposed WMP provided in Attachment SLJ-1 to the Application as reasonable and in the public interest; (2) authorize Public Service to implement its proposed WPR consistent with the terms and conditions reflected in the illustrative WPR tariff (Attachment BAT-2); (3) approve the Company's revenue requirement calculation as reflected in Attachment APF-1 (which will be used for the first annual WPR true-up adjustment), and approve the calculated 2021 WPR revenue requirement of \$17,185,038

³ Application, at pages 4-6.

(contained in Attachment APF-1); (4) authorize the Company to file a compliance advice letter within 20 days of the effective date of a final decision in this proceeding, but on not less than 15 days' notice, with WPR tariff sheets reflecting all terms and conditions that are approved as a result of this proceeding; and (5) authorize Public Service to defer the expenses incurred in connection with this proceeding into a regulatory asset without interest until they are included as expenses in its next Phase I electric rate case.⁴

6. In the late afternoon of July 17, 2020, Public Service filed the supporting testimony and attachments of five witnesses. First, Brooke A. Trammell, Regional Vice President of Rates and Regulatory Affairs, Xcel Energy Services Inc. (XES), testifies about the philosophy behind the WMP, and she provides an overview of the updated, comprehensive WMP. Ms. Trammell discusses the WPR, the eligible program costs Public Service proposes to recover through the WPR, and the illustrative WPR tariff (Attachment BAT-2 to her Direct Testimony).

7. Second, Sandra L. Johnson, Wildfire Mitigation Project Director, XES, explains the details of specific programs and costs associated with the WMP, how Public Service selected its planned programs, the planned timing of implementing the WMP, and how its planned programs will reduce the risk of a wildfire from a utility infrastructure-related ignition. Ms. Johnson explains the role of annual reporting, stakeholder engagement, and community engagement in the WMP during the five-year WPR period

8. Third, Arthur P. Freitas, Manager of Revenue Analysis, XES, discusses the calculation and details of the WPR's annual revenue requirement and annual true-up mechanism for under- or over-recovery of eligible wildfire mitigation costs. He also

⁴ Application, at pages 1-2.

sponsors the 2021 WPR revenue requirement of \$17,185,038 (Attachment APF-1 to his Direct Testimony).

9. Fourth, Steven D. Rohlwing, Manager of Asset Risk Management, XES, explains Public Service's approach to evaluating and determining wildfire risk, as well as the risk modeling and simulation Public Service has performed in developing its updated WMP. Mr. Rohlwing sponsors the Company's Wildfire Risk Model and associated Simulation used in part to develop the WMP.

10. Fifth, Randy L. Lyle, Owner of Mitigation Strategies, is an Independent Fire Consultant engaged by Public Service to review and develop its WMP. Mr. Lyle, who has over three decades of experience in firefighting and utility wildfire mitigation, discusses the prudence of the WMP and provides his opinion that the proposed WMP is reasonable and prudent, as well as consistent with good and emerging utility practice in this field.

11. During the Commission's weekly meeting held on August 26, 2020, the Application was deemed complete for purposes of § 40-6-109.5, C.R.S. (2019), and was referred to an Administrative Law Judge (ALJ) for disposition. Subsequently the undersigned ALJ was assigned to preside over this Proceeding.

II. FINDINGS AND CONCLUSIONS

A. Interventions.

12. Rule 1401(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2015), governs interventions as of right and states in pertinent part:

“A notice of intervention as of right, unless filed by Commission staff, shall state the basis for the claimed legally protected right that may be affected by the proceeding.”⁵

13. On July 30, 2020, the Colorado Office of Consumer Counsel (OCC) filed a Notice of Intervention of Right, Request for Hearing, and Entry of Appearance. OCC’s Intervention is of right and identifies 12 issues it may address regarding the Application.⁶

14. OCC’s Intervention as of right is acknowledged.

15. On August 24, 2020, Trial Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Intervention as of Right by Staff, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing (Staff’s Intervention). Staff’s Intervention is of right and identifies four specific issues it will raise and address in this Proceeding.⁷

16. Staff’s intervention as of right is acknowledged.

17. On August 14, 2020, Colorado Energy Consumers (CEC) filed a Motion to Permissively Intervene and Request for Hearing, pursuant to Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1. On August 17, 2020, CEC filed an Amended Motion to Permissively Intervene and Request for Hearing to add the conferral report required by Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1.

⁵ Amended Rules of Practice and Procedure became effective on July 30, 2020. See Decision No. C20-0177 (mailed on March 30, 2020) in Proceeding No. 19R-0483ALL and § 24-4-103(5), C.R.S. New rules adopted by an administrative agency have a “future effect” (*i.e.*, newly adopted rules are prospective). § 24-4-102(15), C.R.S. Because Public Service filed this Application on July 17, 2020, prior to the effective date of the new rules, this Decision applies the 2015 version of the Rules of Practice and Procedure that were in effect before July 30, 2020. See Article 2, § 11, *Colo. Const.*; *Gambler’s Express v. Public Utilities Commission*, 868 P.2d 405 (Colo. 1994).

⁶ OCC’s Intervention, at pages 2-3.

⁷ Staff’s Intervention, at pages 1-2.

18. CEC states that it has been engaged in the process surrounding Public Service's wildfire mitigation activities. CEC states that it has pecuniary and tangible interests in this proceeding. CEC members take service under Public Service's Secondary General, Primary General, and Transmission General rate schedules.

19. CEC may address the following issues in this proceeding, as well as any other issues CEC may identify from its continued analysis of Public Service's Application and testimony, as well as other documents received through discovery: whether Public Service's Application and WPR constitute improper single issue ratemaking; whether Public Service's requested revenue requirement is just and reasonable and in the public interest; whether Public Service's proposed cost allocation methodology is just and reasonable and in the public interest; and whether the Application is consistent with the Unopposed Partial Settlement Agreement in Proceeding No. 19AL-0268E.

20. The permissive intervention of CEC shall be granted.

21. The Parties to this Proceeding are Public Service, OCC, Staff, and CEC.

B. Prehearing Conference.

22. In anticipation of scheduling an evidentiary hearing, the ALJ will schedule a prehearing conference, in accordance with Rule 1409(a) of the Rules of Practice and Procedure, 4 CCR 723-1. A prehearing conference, via video platform, will be scheduled for **September 29, 2020 at 10:00 a.m.**

23. Holding the prehearing conference remotely is consistent with current public health orders and advisories to prevent the spread of coronavirus (COVID-19) in Colorado. The Parties may **not** appear at the Commission in person to attend the prehearing conference. Instead, Parties and their counsel shall appear at the prehearing conference from remote

locations, either by video conference, or by telephone, using the link and instructions provided in this Decision. The ALJ encourages the Parties and their counsel to attend by video conference.

24. Attachment A to this Decision provides the requirements and information addressing how to use the GoToMeeting platform for participating in the hearing.

25. *At the prehearing conference*, the Parties must be prepared to discuss: (a) the date by which each intervenor will file answer testimony and attachments; (b) the date by which Public Service will file rebuttal testimony and attachments; (c) the date by which each intervenor may file cross-answer testimony and attachments; (d) the date by which each party will file corrected testimony and attachments; (e) the date by which each party will file prehearing motions, other than motions relating to discovery, but including any dispositive motions, motions *in limine*, or motions to strike; (f) a date for a public hearing; (g) the date by which the parties will file any stipulations or a settlement agreement; (h) the date(s) for the evidentiary hearing, including a statement of how many days the parties will need to try this case; and (i) the date by which each party will file its post-hearing statement of position (statements of position will be simultaneous and no responses will be permitted).

26. *At the prehearing conference*, the Parties must be prepared to discuss any matter pertaining to discovery if the procedures and timeframes contained in Rule 1405, 4 CCR 723-1 are not sufficient.

27. *At the prehearing conference*, the Parties must be prepared to discuss any matter pertaining to the treatment of information claimed to be confidential if the procedures and timeframes contained in Rules 1100 and 1101, 4 CCR 723-1, are not adequate. This discussion will include the treatment of additional information for which extraordinary protection may be sought, assuming that there may be such additional information.

28. *At the prehearing conference*, a party may raise any additional issues relevant to this Proceeding.

29. The Parties must consult prior to the prehearing conference with respect to the matters to be discussed at the prehearing conference and are encouraged to present, if possible, a consensus procedural schedule and hearing date(s) that are acceptable to all Parties

30. If the Parties are able to reach agreements on a consensus procedural schedule, hearing date(s), and the other procedural matters addressed in this Decision, the prehearing conference may be vacated

31. **The parties are advised, and are on notice, that** the ALJ will deem a Party's failure to appear or to participate in the prehearing conference to be a waiver of that Party's objection to the rulings made, the procedural schedule established, and the hearing dates scheduled during the prehearing conference. Failure to appear may also lead to a party being excused from the proceeding.

III. ORDER

A. It Is Ordered That:

1. A prehearing conference in this proceeding is scheduled as follows:

DATE: September 29, 2020

TIME: 10:00 a.m.

WEBCASTS: Commission Hearing Room B

METHOD: By video conference using GoToMeetings at link that will be provided to Parties by email

2. Failure of a Party or its counsel to appear or to participate in the prehearing conference shall constitute a waiver of any objection to the rulings made, to the procedural schedule established, and to the hearing dates scheduled during the prehearing conference.

3. If the Parties are able to reach agreements on a consensus procedural schedule, hearing date(s), and the other procedural matters addressed in this Decision, counsel for Public Service Company of Colorado may make a filing stating those agreements. If the prehearing conference is not needed, it may be vacated.

4. The Notice of Intervention of Right, filed by the Colorado Office of Consumer Counsel on July 30, 2020, is acknowledged.

5. The Notice of Intervention as of Right, filed by Trial Staff of the Colorado Public Utilities Commission on August 24, 2020, is acknowledged.

6. The Motion to Permissively Intervene filed by Colorado Energy Consumers on August 17, 2020, is granted.

7. 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