

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0432E

IN THE MATTER OF ADVICE LETTER NO. 1835 – ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO ELIMINATE THE CURRENTLY EFFECTIVE GENERAL RATE SCHEDULE ADJUSTMENTS ("GRSA") AND GENERAL RATE SCHEDULE ADJUSTMENT - ENERGY ("GRSA-E"), AND PLACE INTO EFFECT REVISED BASE RATES AND OTHER AFFECTED CHARGES FOR ALL ELECTRIC RATE SCHEDULES IN THE COMPANY'S ELECTRIC TARIFF, INCLUDING UPDATED ELECTRIC AFFORDABILITY PROGRAM ("EAP"), LOAD METER, AND PRODUCTION METER CHARGES TO BECOME EFFECTIVE NOVEMBER 19, 2020.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
FURTHER SUSPENDING EFFECTIVE
DATE OF FILED TARIFF SHEETS,
ON INTERVENTIONS, AND
SCHEDULING PREHEARING CONFERENCE**

Mailed Date: December 11, 2020

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I. STATEMENT**A. Procedural History.**

1. On October 19, 2020, Public Service Company of Colorado (Public Service) filed AL-1835 with tariff sheets. Through AL-1835, Public Service proposes to allocate its approved \$1,835,585,415 revenue requirement¹ across customer classes, based on a Class Cost of Service Study (CCOSS) using the 2019 Test Year approved by the Commission in Proceeding No. 19AL-0268E. Public Service states that this filing does not affect its annual revenue. This Proceeding is a Phase II Electric Rate Case.

2. Public Service proposes a November 19, 2020 tariff effective date. However, Public Service requests that the Commission suspend the tariffs and set them for hearing, with an effective date of July 27, 2021.

3. By Decision No. C20-0793 (issued on November 10, 2020) (Suspension Decision), and pursuant to § 40-6-111(1), C.R.S. (2019), the Commission set for hearing the tariffs filed with Advice Letter No. 1835-Electric and thereby suspended their effective date for 120 days from the proposed effective date, or until March 19, 2021. The Suspension Decision commenced this Proceeding, effective on its mailed date. Decision No. C20-0793 also established an intervention deadline for 30 days after its mailed date, or no later than December 10, 2020. 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.

¹ The amount of \$1,828,985,415 was approved in Proceeding No. 20AL-0268E and \$6,600,000 for the Electric Affordability Program was allowed in Proceeding No. 20AL-0090E.

4. The procedural history of the above captioned proceeding is set forth in Decision No. C20-0793 and is repeated here as necessary to put this Decision into context.

5. On October 19, 2020, Public Service filed a Motion for Extraordinary Protection for Highly Confidential Customer Information (Motion for Protective Order). The merits of the Motion for Protective Order will be addressed in a separate interim decision.

B. Further Suspension of the Effective Date of the Filed Tariffs.

6. While the proposed effective date on the tariffs filed with Advice Letter No. 1835-Electric was November 19, 2020, Public Service requested in the Advice Letter that the Commission set for hearing and suspend the tariffs, with a requested effective date of July 27, 2021. As noted above, by Decision No. C20-0793 the Commission suspended the effective date of the filed tariff sheets for 120 days, or until March 19, 2021.

7. Pursuant to § 40-6-111(1)(b), C.R.S. (2019), the Commission has the discretion to suspend the effective date of the tariff sheets by separate order for an additional 130 days, that is for a maximum period of 250 days or until July 27, 2021.

8. Because of the complex issues likely to be litigated in this Phase II Electric Rate Case and because a procedural schedule has not yet been proposed or adopted, the ALJ anticipates that a final Commission decision could not be issued in this Proceeding until after the expiration of the initial 120-day suspension period of March 19, 2021.

9. Pursuant to § 40-6-111(1), C.R.S. (2019), therefore, by this Interim Decision the ALJ will further suspend the effective date of the tariff sheets filed with Advice Letter No. 1835-Electric to and including **July 27, 2021**. If the Commission does not establish new rates by that date, Public Service could place those tariff sheets into effect prospectively.

C. Interventions.**1. Interventions as of Right.**

10. Rule 1305(d) of the Rules of Practice and Procedure. 4 *Code of Colorado Regulations* (CCR) 723-1 (2020), requires, after the Commission issues the Suspension Decision, that: “Any person wishing to participate as a party in any hearing the Commission may hold on a suspended tariff ... 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, governs the timing of filing interventions and states in relevant 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.”

11. On November 16, 2020, the Colorado Office of Consumer Counsel (OCC) filed a notice of intervention of right pursuant to Rule 1401(b), 4 CCR 723-1. The OCC listed 11 specific issues that the OCC may address in this Proceeding.²

12. The OCC’s intervention of right is acknowledged. The OCC is a Party to this Proceeding.

13. On December 8, 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 lists seven specific issues it intends to address in this Proceeding.

14. Staff’s Intervention as of right is acknowledged. Staff is a Party to this Proceeding.

² OCC Notice of Intervention of Right, at pp. 2–3.

2. Permissive Interventions.

15. Several interested persons have filed motions for permissive intervention. Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1 (2020), 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. ... Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.

(Emphasis added.)

16. On November 12, 2020, the City of Boulder (Boulder) filed a Petition for Leave to Intervene, requesting permissive intervention (Boulder Intervention). Boulder is a home rule city and municipal corporation created pursuant to Article XX, Colo. Const., and the Boulder Home Rule Charter. Boulder is a large customer of Public Service that operates facilities which take service under Public Service rate schedules Small Commercial (C), Secondary General (SG), Primary General (PG), Street Lights (SL) and Non-Metered Street Lights (NMSL). Boulder asserts that its community is comprised of more than 40,000 residential customers and more than 5,000 business customers, who take service under several Public Service rate schedules. Boulder claims its interests are not adequately represented by any other party in this Proceeding.³ While Public Service's response was due on November 19, 2020, it has filed no

³ Boulder Intervention, at pages 2 and 3.

response.

17. On November 23, 2020, the City and County of Denver, Colorado (Denver) filed a Motion to Intervene, requesting permissive intervention (Denver Intervention). Denver is a home rule city and municipal corporation created pursuant to Article XX, Colo. Const., and the Home Rule Charter of Denver. In addition to the residents and businesses within the city, Denver purchases electricity from Public Service. Denver asserts that its interests will not be adequately represented by any other party in this proceeding including, but not limited to, the OCC, Staff, environmental or trade organizations, and other local government entities.⁴ While Public Service's response was due on November 30, 2020, it has filed no response.

18. Pursuant to Rule 1400(d) of the Rules of Practice and Procedure, 4 CCR 723-1, "[t]he Commission may deem a failure to file a response as a confession of the motion."

19. The ALJ finds that that Boulder and Denver have each stated good cause under Rule 1401 to be a party to this Proceeding. The ALJ finds good cause to grant the permissive interventions sought by Boulder and Denver.

20. On December 3, 2020, Walmart, Inc. (Walmart) filed a Petition for Intervention, requesting permissive intervention. Responses are not due until December 10, 2020.

21. On December 4, 2020, Energy Outreach Colorado (EOC) filed a Motion to Intervene, requesting permissive intervention. Responses are not due until December 11, 2020.

22. On December 9, 2020, the Colorado Solar and Storage Association (COSSA) and the Solar Energy Industries Association (SEIA) filed a Joint Motion to Intervene, requesting permissive intervention. Responses are not due until December 16, 2020.

⁴ Denver Intervention, at pages 1 through 3.

23. The requests for permissive intervention of Walmart, EOC, and COSS/SEIA, as well as any others filed by the intervention deadline, will be addressed in a separate decision.

24. As of the date this Decision is being issued, Public Service, the OCC, Staff, Boulder, and Denver are the Parties to this Proceeding.

D. Prehearing Conference.

25. Decision No. C20-0793, Ordering Paragraph No. 2 at page 6, directed the ALJ to set a hearing date, to rule on interventions, and to establish other procedures by separate decisions.

26. The issues in this Phase II Electric Rate Case and the approaching Holidays compel the ALJ to schedule hearing dates and to adopt a workable procedural schedule for the litigation of this Proceeding so that the Commission can issue its decision before the end of the suspension period. Therefore, the ALJ will set a prehearing conference after the close of the intervention deadline, in accordance with Rule 1409(a) of the Rules of Practice and Procedure, 4 CCR 723-1. The prehearing conference will be scheduled for **December 22, 2020 at 10:00 a.m.** by remote video conference.

27. *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;⁵ (d) the date by which each Party will file corrected testimony and attachments;⁶ (e) the date by which each Party will file prehearing motions, other

⁵ Cross-answer testimony shall respond only to the answer testimony of another intervenor.

⁶ Filing of corrections shall be limited to correcting errors (*e.g.*, mathematical errors, typographical errors, and etc.) in the testimonies or attachments as filed. Without leave of the ALJ, corrections cannot be used for any other purpose (*e.g.*, to make material or substantive changes to prefiled testimony or attachments).

than motions relating to discovery, but including any dispositive motions, motions *in limine*, or motions to strike;⁷ (f) whether a final prehearing conference is necessary and, if it is, the date for that prehearing conference; (g) the date by which the Parties will file any stipulations or a settlement agreement;⁸ (h) the date(s) and locations for any public comment hearings; (i) the date(s) for the evidentiary hearing, including a statement of how many days the Parties will need to try this case; (j) the date by which each Party will file its post-hearing statement of position (statements of position will be simultaneous with no responses permitted),⁹ and (k) the date for a technical conference, if any, prior to the issuance of a recommended decision on the merits.¹⁰

28. The following page limits on statements of position will be imposed: The statement of position to be filed by Public Service may not exceed 60 pages in length, exclusive of a table of contents and appendices; the statement of position to be filed by each intervenor may not exceed 30 pages in length, exclusive of a table of contents and appendices. If any intervenors file joint statements of position, the foregoing 30-page limit will apply to all joint statements of position.

29. Absent the filing of an amended advice letter changing the effective date of the proposed tariff sheets and allowing an extension of the suspension period, the Commission decision in this Proceeding must issue no later than July 27, 2021. To allow time for statements of position, the recommended decision, exceptions, responses to exceptions, and a Commission

⁷ This date should be at least 21 calendar days before the first day of the hearing to allow for filing of responses and entry of a prehearing decision.

⁸ This date should be at least ten business days before the first day of hearing.

⁹ Post-hearing statements of position should be filed no later than 14 calendar days from the conclusion of the evidentiary hearing.

¹⁰ A technical conference will be for the benefit of Advisory Staff and the ALJ. Prior to the date of the technical conference, the ALJ will issue a decision providing parameters for Public Service to conduct different scenarios on several issues on its class cost of service study model.

decision on exceptions, the **evidentiary hearing in this matter must be *concluded* no later than April 8, 2021.**

30. *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.

31. *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 highly confidential information for which extraordinary protection may be sought, assuming that there may be such highly confidential information.

32. *At the prehearing conference*, a Party may raise any additional issue relevant to the litigation of this Proceeding.

33. 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, hearing date(s), and agreements on other procedural matters that are acceptable to all Parties. The ALJ will order counsel for Public Service to coordinate these discussions.

34. 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 ALJ encourages Public Service to make a filing **no later than 3:00 p.m. on December 18, 2020**, stating those agreements. Alternatively, Public Service may present agreements on a consensus procedural schedule, hearing date(s), and other procedural matters at the prehearing conference.

35. **The Parties are advised, and are on notice, that** the ALJ will deem a Party's failure 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.

E. Procedures for the Remote Prehearing conference.

36. Under the current circumstances resulting from the impacts of the COVID-19 pandemic and responses to the pandemic by Colorado state government, holding the prehearing conference in person is neither feasible nor in the public interest at this time. In order to protect the health and safety of the counsel and support personnel for the Parties, and of Commission employees working on this Proceeding, it will necessary to hold the prehearing conference remotely.

37. The remote prehearing conference will be held using the web-hosted video conferencing service, GoToMeeting. This Decision and Attachment A explain the procedures, requirements, and instructions to participate in the remote prehearing conference using GoToMeeting, and are intended to ensure that the prehearing conference proceeds efficiently without technical problems. Therefore, the parties must carefully review and follow all requirements in this Decision and Attachment A.

38. To minimize the potential that the prehearing conference may be disrupted by non-participants, the GoToMeeting link and access code to participate in the prehearing conference will be provided to the parties by email a few days before the prehearing conference. For the same reason, the parties, their counsel, and support personnel will be prohibited from distributing that information to anyone not participating in the prehearing conference.

39. Videoconference participation using GoToMeeting allows for comments and arguments to be presented in a manner most similar to what occurs during in-person hearings. Individuals who wish to participate in the prehearing conference can participate by either telephone or computer. The paragraphs below set forth general instructions and requirements for how to participate by telephone or by computer. These requirements are intended to ensure that the remote prehearing conference proceeds efficiently without technical problems. Attachment A includes important requirements and technical information on participating in the prehearing conference through GoToMeeting using a computer and internet connection. It is vitally important that parties and counsel carefully review and follow all requirements in this Decision and Attachment A.

F. Other Advisements.

40. **The Parties are advised that** an order may issue requiring that the presentation of evidence at the hearing shall be done through electronic exhibits to the fullest extent possible, with the exception of exhibits to be used for impeachment or offered for admission into evidence for the first time at the hearing.

41. **The 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. These Rules are available on-line at www.dora.colorado.gov/puc and in hard copy format from the Commission.

42. At this point in the Proceeding, all Parties are represented by counsel. The ALJ calls counsels' attention to the requirement of Rule 1202(d), 4 CCR 723-1, that, "[e]very pleading of a party represented by an attorney shall be signed by the attorney, and *shall state* the attorney's address, telephone number, e-mail address, and attorney registration number." (Emphasis supplied.) **The Parties are advised, and are on notice, that** filings must comply with this

requirement¹¹ and with the other requirements found in the Commission's rules pertaining to filings made with the Commission.

43. **The Parties are advised, and are on notice, that** timely filing with the Commission means that the Commission *receives* the filing by the due date. Thus, if a document is placed in the mail on the date on which the document is to be filed, then the document is *not* filed timely with the Commission. Pleadings and other documents are filed with the Commission either by using the E-filings System, or by filing the original of a paper document along with three copies. Emailing pleadings and other documents to the ALJ, the Commissioners, the Director of the Commission, or other employees of the Commission **does not** constitute a proper filing under Rule 1204 of the Rules of Practice and Procedure, 4 CCR 723-1.

44. **Each Party is specifically advised** that all filings with the Commission must also be served upon counsel for all other Parties, in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

45. **Each Party is specifically advised** that, pursuant to Rule 1400(b) of the Rules of Practice and Procedure, 4 CCR 723-1, responding Parties (*i.e.*, the Parties that did not file a motion other than a motion for permissive intervention) have the procedural right to file a written response to motions within 14 days after service of the motion, unless that time is shortened by the Commission or the ALJ.

¹¹ During the course of this Proceeding, the ALJ may have occasion to inform counsel, on short notice, of his rulings. The ALJ will make such notifications by e-mail and will rely solely on signature blocks of pleadings for the appropriate e-mail addresses. If any counsel's email address changes during the pendency of this Proceeding, please promptly update it with the Commission.

46. **The Parties are advised, and are on notice, that** the Commission has an E-Filings System available. If a Party and/or its counsel are not registered to use the E-Filings System, they are requested to register at www.dora.colorado.gov/puc. It is important that Parties and/or their counsel are properly registered to use the E-Filings System to ensure consistent communication between Parties, counsel, and the Commission and its staff.

47. Other advisements may be provided in subsequent interim decisions.

II. ORDER

A. It Is Ordered That:

1. Pursuant to § 40-6-111(1), C.R.S. (2019), as amended, the effective date of the tariff sheets filed by Public Service Company of Colorado (Public Service) with Advice Letter No. 1835-Electric on October 19, 2020, are suspended for an additional 130 days for a total of 250 days; that is, to and including July 27, 2021.

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

DATE: December 22, 2020

TIME: 10:00 a.m.

WEBCAST: Commission Hearing Room B

METHOD: By video conference using GoToMeetings at the link to be provided to parties by email prior to the prehearing conference

3. Consistent with the discussion and findings *supra*, the matters identified in this Interim Decision will be discussed at the prehearing conference. Those attending the prehearing conference must be prepared to address those matters and must have authority to agree to a procedural schedule, to the resolution of all procedural matters, and to evidentiary hearing dates.

4. Failure of a Party (or putative party) or its counsel to attend 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.

5. Consistent with the discussion above, prior to the prehearing conference counsel for Public Service shall consult and coordinate those discussions with counsel for the intervenor by right and with counsel for persons who have filed intervention pleadings prior to the December 10, 2020 deadline, regarding the procedural schedule, hearing date(s), and the other procedural matters addressed in this Decision.

6. 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 may make a filing no later than 3:00 p.m. on December 18, 2020, stating those agreements. Alternatively, counsel for Public Service may present at the prehearing conference any agreements on a consensus procedural schedule, hearing date(s), and other procedural matters.

7. The intervention of right filed by the Colorado Office of Consumer Counsel on November 16, 2020, is acknowledged.

8. The intervention as of right filed by Trial Staff of the Colorado Public Utilities Commission on December 8, 2020, is acknowledged.

9. The Petition for Leave to Intervene filed by the City of Boulder on November 12, 2020, is granted.

10. The Motion to Intervene filed by the City and County of Denver on November 23, 2020, is granted.

11. Attachment A is incorporated by reference into this Decision.
12. The Parties shall be held to and shall comply with the requirements and advisements in this Decision.
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