

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 20AL-0432E

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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.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
STEVEN H. DENMAN  
GRANTING PERMISSIVE  
INTERVENTIONS, AND ADOPTING  
CONSENSUS PROCEDURAL SCHEDULE**

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Mailed Date: December 29, 2020

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

1. On October 19, 2020, Public Service Company of Colorado (Public Service) filed Advice Letter No. 1835-Electric along with tariff sheets. Through Advice Letter No. 1835-Electric, Public Service proposes to allocate its approved \$1,835,585,415 revenue requirement<sup>1</sup> 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. The effective date of the tariff sheets filed with Advice Letter No. 1835-Electric have been suspended for a total of 250 days until July 27, 2021, pursuant to § 40-6-111(1)(b), C.R.S. (2019).<sup>2</sup>

3. 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.

4. At the prehearing conference held on December 22, 2020, the presiding Administrative Law Judge (ALJ) granted certain pending motions for permissive intervention and indicated he would adopt the consensus procedural schedule. This Interim Decision memorializes these procedural rulings by the ALJ.

**B. Permissive Interventions.**

5. 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,

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<sup>1</sup> 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.

<sup>2</sup> See Decision No. C20-0793 (issued on November 10, 2020) and Decision No. R20-0887-I (issued on December 11, 2020).

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.”

6. Decision No. R20-0887-I (issued on December 11, 2020) previously granted permissive interventions to the City of Boulder (Boulder) and the City and County of Denver, Colorado (Denver),

7. Several other interested persons or entities filed motions for permissive intervention. Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, 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.)

8. On December 3, 2020, Walmart, Inc. (Walmart) filed a Petition for Intervention, requesting permissive intervention. Walmart is a large commercial customer of Public Service

with 60 retail stores and related facilities within the service territory of Public Service. These facilities collectively consume over 159 million kWh of electricity annually, primarily in the Secondary General Service class. Walmart's corporate headquarters is located in Bentonville, Arkansas. Walmart asserts that this proceeding will have an impact on its energy costs and operations in Colorado, which will substantially affect its pecuniary and tangible interests. Walmart, a large retail electric customer, states its interests are not adequately represented by any other party to this proceeding. Walmart committed that its intervention will not unduly broaden the issues or delay the proceedings.

9. On December 4, 2020, Energy Outreach Colorado (EOC) filed a Motion to Intervene, requesting permissive intervention. Pursuant to § 40-8.5-104, C.R.S., EOC collects and disburses low-income energy assistance funds, as well as voluntary contributions from utility customers pursuant to the Low-Income Energy Assistance Act, § 40-8.7-101, *et seq.*, C.R.S. EOC is concerned about Public Service's proposed shift of over \$71 million in revenue requirement to the Residential class, reasons for the shift, and whether this cost shift disproportionately impacts low-income residential customers. EOC is also concerned about rate design issues and demand-side management impacting the Residential class. EOC claims to have a tangible and pecuniary interest to ensure that rates for low-income customers are just, reasonable, and in the public interest, so that its services are not expanded to even more Colorado citizens. EOC committed that its intervention will not unduly broaden the issues or delay the proceeding.

10. On December 9, 2020, the Colorado Solar and Storage Association (COSSA) and the Solar Energy Industries Association (SEIA) (together COSS/SEIA) filed a Joint Motion to Intervene, requesting permissive intervention. COSSA is a nonprofit trade association, originally established in 1989, whose membership is comprised of renewable energy users and approximately

160 solar-related businesses, many of which are located or do business in Public Service's service territory. SEIA is the national trade association for the U.S. solar energy industry, which represents organizations that promote, manufacture, install and support the development of solar energy. COSSA/SEIA assert that Public Service's rate proposals will directly affect the cost savings that can be achieved through behind-the-meter distributed energy resource (DER) investments, including solar and storage, and they are interested in the impact of rate designs on DER markets in Colorado. COSS/SEIA commit that their interventions will not unduly broaden the issues or cause undue delay in this proceeding.

11. On December 10, 2020, Molson Coors Beverage Company (Molson Coors), filed a Petition for Leave to Intervene, requesting permissive intervention. Molson Coors operates a brewery and associated fabrication facilities in Golden, Colorado, and receives electric service from Public Service at its facilities as a primary general standby customer. Molson Coors operates its own natural gas fired turbines in addition to receiving electric service from Public Service. Molson Coors asserts that Public Service's proposed rate designs potentially will increase its electric bills significantly and will likely substantially affect Molson Coors' tangible and pecuniary interests. Molson Coors committed that its intervention will not broaden the issues in this proceeding.

12. On December 10, 2020, Climax Molybdenum Company (Climax) filed a Motion to Intervene, requesting permissive intervention. Climax operates the Climax and Henderson molybdenum mines and related facilities near Leadville and Empire, Colorado, respectively. Climax receives electric service from Public Service at its respective facilities and is one of Public Service's largest electric customers. Climax argues that the Commission's decision in this case will directly and substantially affect Climax's electricity costs, and possibly the reliability of

Climax's electric service necessary for mining and milling molybdenum, and thus will substantially affect Climax's tangible and pecuniary interests as contemplated by Rule 1401(c). Climax maintains that its interests as one of Public Service's largest electric customers will not be adequately represented by other parties. Climax committed that its intervention will not unduly broaden the issues in this proceedings.

13. On December 10, 2020, the Southwest Energy Efficiency Project (SWEET) filed a Motion to Intervene, requesting permissive intervention. Established in 2001, SWEET is a regional non-profit organization, which works to advance energy efficiency in utility regulatory proceedings and other public policy forums in Colorado. SWEET argues that the decision in this Phase II rate case will substantially affect SWEET's tangible interests in advancing robust energy efficiency, demand response, and transportation electrification policies and programs. In addition, SWEET claims no other party in this proceeding, including the OCC, will adequately represent its interests. If allowed to intervene, SWEET committed that its participation in this proceeding will not unduly broaden the issues or delay the proceeding.

14. On December 10, 2020, Vote Solar filed a Motion to Intervene, requesting permissive intervention. Vote Solar is an independent Section 501(c)(3) nonprofit organization that promotes clean energy by making solar power more accessible and affordable through its policy advocacy. Vote Solar claims to have more than 3,000 members in Colorado, including members who are Public Service customers, but not corporations. Vote Solar argues that the decision in this proceeding will substantially affect its tangible interests in advancing rooftop solar, and other distributed energy resources, including electric vehicle charging. Vote Solar claims no other party in this proceeding, including the OCC, will adequately represent its interests. If allowed to

intervene, Vote Solar committed that its participation in this proceeding will not unduly broaden the issues or delay the proceeding.

15. On December 10, 2020, the Colorado Energy Consumers (CEC) filed a Motion to Permissively Intervene. CEC is an unincorporated association of corporate entities duly authorized and in good standing to transact business within Colorado. According to CEC, its members operate facilities within Public Service's service territory and purchase electricity and related energy services from Public Service. Specifically, CEC asserts that its members take electric service from Public Service at the Secondary General, Primary General, and Transmission General rate schedules. Public Service projects that, should its proposed rates be approved, on average these commercial and industrial rate classes will incur net monthly total bill impacts of -\$93 (-4.05%), -\$990 (-2.58%), and -\$40,047 (-6.52%), respectively. CEC maintains that, therefore, the rate increases proposed in this proceeding will directly impact CEC's members' pecuniary and tangible interests. CEC argues that its members are all large commercial and industrial electric customers with unique service requirements, CEC concludes that its interests cannot be adequately represented by any other party in this proceeding. CEC committed that its intervention will not unduly broaden the issues in this proceeding.

16. On December 10, 2020, the Federal Executive Agencies (FEA) filed a Motion to Intervene, requesting permissive intervention. The FEA consists of certain federal agencies of the United States Government that have offices, facilities, and installations in Public Service's service territory and also purchase electric utility service from Public Service. The DOE has been delegated authority by the General Services Administration to represent the consumer interest of the FEA in this proceeding under 40 U.S.C. § 501(c)(2) and § 121(d). The FEA facilities are served under a number of Public Service's rate schedules, including primary

general, transmission general, secondary general, and small commercial. The FEA argues that it has a material pecuniary interest in the outcome of this case and a tangible interest in the proper resolution of the issues raised by the Company in this filing. FEA asserts that its interests would not be adequately represented by other parties.

17. Public Service did not file a response to Walmart's Petition for Intervention nor to EOC's Motion to Intervene.<sup>3</sup>

18. On December 15, 2020, Public Service file a response to the permissive intervention pleadings filed by Molson Coors, Climax, Vote Solar, CEC, SWEEP, FEA, and COSS/SEIA. Public Service did not oppose these motions based upon the movants' stated claims of substantial pecuniary or tangible interests in the outcome of this proceeding, pursuant to Rule 1401(c), 4 CCR 723-1. However, Public Service noted that its lack of opposition was not intended to indicate agreement with any individual substantive position in the motions, which Public Service will address as appropriate during the course of this proceeding.<sup>4</sup>

19. The ALJ agreed that each of the foregoing intervenors has stated good cause under Rule 1401 for permissive intervention in this Phase II rate case. The requests for permissive intervention filed by EOC, COSS/SEIA, Molson Coors, Climax, Vote Solar, CEC, SWEEP, FEA, and Walmart were granted at the December 22, 2020 Prehearing Conference. This Decision memorializes the ALJ's grant of those permissive interventions.

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<sup>3</sup> 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."

<sup>4</sup> Public Service Company of Colorado's Response to the Motions to Intervene, at page 2. Of course, a party's lack of objection to another party's request for permissive intervention means only that there is no opposition to the permissive intervention. The lack of objection does not indicate, and should not be construed as, substantive agreement with any individual statements in the motion to intervene, unless the non-objecting party specifically states such agreement.



20. On December 9, 2020, the Cities of Arvada, Aurora, Centennial, and Thornton, the Towns of Erie and Windsor, and the Colorado Communications and Utility Alliance (collectively, Local Government Coalition), filed a Motion to Intervene, requesting permissive intervention. The Local Government Coalition asserted that, if allowed to intervene, among the street lighting issues it intended to address were rates for street lighting and rules and regulations for street lighting, including street light acquisitions. The Local Government Coalition committed that its intervention will not unduly broaden the issues or cause delay in this proceeding.<sup>5</sup>

21. On December 15, 2020, Public Service filed a response to the Local Government Coalition's Motion to Intervene, arguing that the additional issues the Local Government Coalition pleaded as a basis for permissive intervention relating to rules and regulations for street lighting including street lighting acquisitions, were not raised in Public Service's tariff filing or supporting Direct Testimony, and are not at issue here. Public Service requested an order excluding the rules and regulations for street lighting including street lighting acquisitions, from the scope of this proceeding.<sup>6</sup>

22. On Friday, December 18, 2020 at 4:36 p.m., the Local Government Coalition filed a Motion for Leave to file a Reply in Support of the Motion to Intervene (Motion for Leave to Reply), along with a 10-page reply brief.<sup>7</sup>

23. At the December 22, 2020 Prehearing Conference the ALJ took under advisement the Local Government Coalition's Motion to Intervene, Public Service's response to the Motion

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<sup>5</sup> Local Government Coalition's Motion to Intervene, at pages 3, 4, and 5.

<sup>6</sup> Public Service's Response to the Motion to Intervene of the City of Arvada et al., at pages 1-4.

<sup>7</sup> The ALJ was served with a copy of the Motion for Leave to Reply at 4:47 p.m. on Friday, December 18, 2020 through the E-Filings System.

to Intervene, and the Local Government Coalition's Motion for Leave to Reply. A separate interim decision will be issued ruling on these motions.

24. As of the date this Decision is being issued, the parties to this proceeding are: Public Service, the OCC, Staff, Boulder, Denver, EOC, COSS/SEIA, Molson Coors, Climax, Vote Solar, CEC, SWEEP, FEA, and Walmart.

**C. Consensus Procedural Schedule.**

25. On December 18, 2020, Public Service filed a Notice of Filing a Consensus Proposed Procedural Schedule Pursuant to Decision No. R20-0887-I (Notice), proposing a negotiated Consensus Proposed Schedule to which all parties and potential parties have agreed. The Notice also proposed that, in order to accommodate the Consensus Procedural Schedule, Public Service would file an amended Advice Letter designed to allow the ALJ to extend the suspension deadline by 45-days. Public Service agreed to the proposed consensus schedule and committed to file the amended advice letter to accommodate the proposed procedural schedule "if the ALJ approves the proposed schedule, agrees that this approach is acceptable, and so indicates in an order adopting the consensus proposed schedule."<sup>8</sup>

26. The ALJ has reviewed the Notice and the proposed Consensus Proposed Schedule. In this Decision, the ALJ approves the proposed Consensus Procedural Schedule, agrees that Public Service's proposed approach for filing the amended advice letter to extend the suspension deadline is acceptable, and here indicates the same in this decision and order adopting the Consensus Procedural Schedule.

27. The ALJ will adopt the following Consensus Procedural Schedule:

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<sup>8</sup> Notice, at pages 2 and 3.

<b>Procedural Activity</b>	<b>Due Date(s)</b>
Answer Testimony & Attachments	Monday, March 8, 2021
Rebuttal & Cross-answer Testimony & Attachments	Wednesday, April 7, 2021
Prehearing Motions	Monday, April 12, 2021
Stipulations &/or Settlement Agreements	Monday, April 19, 2021
Corrections to Pre-filed Testimony & Attachments	Wednesday, April 21, 2021
Evidentiary Hearing	Monday, May 3 – Friday, May 14, 2021
Statements of Position (Filed Simultaneously)	The earlier of 14-days after the last day of hearing or May 28, 2021

28. The end of the 250-day suspension period will be determined by the ALJ after Public Service has filed the amended Advice Letter which will allow the ALJ to extend the suspension deadline by 45-days. A separate decision will be issued advising the parties of the end of the amended 250-day suspension period.

29. A Technical Conference prior to issuance of recommended decision on the merits will be scheduled at the discretion of the ALJ.

### **1. In-person versus remote hearings.**

30. To the extent public comment hearings can be scheduled at a physical location, the parties requested that the public comment hearings would be held in the cities of Denver and Grand Junction. The parties have deferred to the ALJ as to the date(s) and actual location(s) for these public comment hearings. If the Coronavirus pandemic does not allow for in-person public comment hearings, the parties have deferred to the ALJ as to the timing and method of

receiving public comments. A separate decision on the date(s) for any public comment hearing will be issued later.

31. Separate decisions on the dates for any Technical Conference and public comment hearings will be issued later.

32. All parties are willing and able to participate in the evidentiary hearing by remote video conference. The parties would like, however, to preserve the opportunity for an in-person hearing if the Commission will be holding in-person hearings in May 2021. The webcast of the remote hearing will be scheduled for Hearing Room A on the hearing dates. If an in-person hearing can be held, it will also be in Hearing Room A. The ALJ will issue a separate decision in adequate time before the scheduled remote hearing advising the parties whether an in-person hearing is possible.

## **2. Discovery-related Matters.**

33. Rule 1405(b) and Rule 1405(d) of the Rules of Practice and Procedure, 4 CCR 723-1, will control discovery, and the following shall also apply to this proceeding:

(a) Service of all discovery requests will be through electronic mail. Public Service's electronic mail service regarding discovery responses will provide access to a link to an external SharePoint site that will provide Public Service's electronic versions of discovery responses. This procedure is expected to maximize the time parties are allowed to respond to discovery and promotes efficiency and cost savings.

(b) Discovery responses, except attachments, shall be served in a single document (e.g., .doc, .docx, or .pdf) unless otherwise agreed to by the requesting and responding parties. All discovery requests and responses will be served upon counsel for each party to the proceeding.

(c) The parties will provide workpapers supporting their Answer, Rebuttal, or Cross- Answer Testimony within three business days of filing of the related testimony.

(d) In compliance with Rules 1101(g) and 1101(h) of the Rules of Practice and Procedure, 4 CCR 723-1, all confidential and highly confidential documents and discovery responses (and any requests containing confidential or highly confidential information) will 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), may also be disclosed to a party's experts or advisors. 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 will 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.

(e) Unless modified by the ALJ or the Commission, Rules 1100 and 1101 will govern the treatment of confidential information (*i.e.*, information claimed to be confidential) and highly confidential information for which extraordinary protection is sought.

34. 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 through the Commission's E-filings System and then served by e-mail on the parties. 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.

35. Other procedural matters may be provided in subsequent interim decisions.

## **II. ORDER**

### **A. It Is Ordered That:**

1. The Petitions or Motions to Intervene filed by Walmart, Inc.; Energy Outreach Colorado; the Colorado Solar and Storage Association and the Solar Energy Industries Association; Molson Coors Beverage Company; Climax Molybdenum Company; the Southwest Energy Efficiency Project; Vote Solar; Colorado Energy Consumers; and the Federal Executive Agencies are granted, consistent with the findings, discussion, and conclusions in this Decision.

2. A remote evidentiary hearing in this proceeding is scheduled as follows:

DATE: May 3 through 7 and 10 through 14, 2021

TIME: 9:00 a.m.<sup>9</sup>

WEBCAST: Commission Hearing Room A

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

3. The parties, counsel, witnesses, and members of the public shall not attend the remote hearing in-person at the Commission's hearing room, unless directed to do so by a future decision.

4. The procedural schedule and procedural rulings set forth in Paragraph Nos. 27 through 34 at pages 11 through 14 are hereby adopted.

5. The Motion to Intervene filed on December 9, 2020 by the Cities of Arvada, Aurora, Centennial, and Thornton, the Towns of Erie and Windsor, and the Colorado Communications and Utility Alliance (collectively, Local Government Coalition); the response to the Local Government Coalition's Motion to Intervene filed on December 15, 2020 by Public Service Company of Colorado; and the Motion for Leave to file a Reply in Support of the Motion to Intervene filed on December 18, 2020 by to the Local Government Coalition shall be taken under advisement and addressed in a subsequent interim decision.

6. The parties shall be held to and shall comply with the requirements and procedural rulings memorialized in this Decision.

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<sup>9</sup> Hearings on Wednesday May 5 and Wednesday May 12, 2021 shall begin at 10:30 a.m. in order to accommodate the Commission's Weekly Meetings scheduled for those dates.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

STEVEN H. DENMAN

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director