

Decision No. C04-0720

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-436E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR AN ORDER AUTHORIZING IT TO IMPLEMENT A PURCHASED
CAPACITY COST ADJUSTMENT RIDER IN ITS PUC NO. 7 - ELECTRIC TARIFF.

**DECISION WAIVING ADVICE LETTER
NO. 1415 NOTICE REQUIREMENT**

Mailed Date: June 29, 2004

Adopted Date: June 8, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission upon its own motion to waive the Commission rules requiring provision of notice of advice letter filings pursuant to 4 *Code of Colorado Regulations* (CCR) 723-1-41.

2. On October 3, 2003, Public Service Company of Colorado (Public Service) filed an application for an order authorizing it to implement a Purchased Capacity Cost Adjustment Rider (PCCA) to recover the incremental purchased capacity costs actually paid to third-party power producers that are not currently being recovered in its base rates. Public Service also proposed to modify the operation of the Earnings Test for 2004 through 2006 to provide for return of 100 percent of any earnings in excess of its authorized rate of return on equity to customers. Public Service's tariffs incorporating those changes were attached to its application. A hearing was conducted on the application on April 14 through 16, 2004.

3. We issued Decision No. C04-0476 on May 10, 2004, granting Public Service's application. Public Service subsequently filed Advice Letter No. 1415 on May 28, 2004, for an effective tariff date of June 1, 2004. Public Service filed the Advice Letter contemporaneously with its Application for Rehearing, Reargument, or Reconsideration of Decision No. C04-0476. We also note that we did not require a compliance filing of the PCCA Advice Letter and tariff in our Decision.

4. Rule 4 CCR 723-1-41 sets out the requirements for filing tariffs with this Commission. Rules 41.3 and 41.4 set out the procedure to change tariffs upon 30 days' or more notice. Rule 41.5 allows a tariff filing on less than 30 days' notice where a fixed utility has made formal application, and for good cause shown, pursuant to § 40-3-104(2), C.R.S., the Commission grants permission to allow a tariff to become effective on less-than-statutory notice. That statutory provision also provides that the Commission shall have such discretion to allow a tariff to become effective on less than 30 days' notice.

5. Public Service filed its Advice Letter No. 1415, along with accompanying tariffs on May 28, 2004, with an effective date of June 1, 2004. This is less than 30 days' notice and in fact is on less than 1 days' notice. Public Service failed to follow the proper procedure to file such an Advice Letter on less-than-statutory notice by failing to seek Commission authorization for such a filing. Further, we did not require a compliance filing for a June 1, 2004 effective date in Decision No. C04-0476.

6. However, notwithstanding the procedural deficiencies here, we find it in the best interests of the public good to waive the requirements of Rule 4 CCR 723-41-41 and allow Public Service's Advice Letter No. 1415 filing to be effective June 1, 2004. We note, however,

that this is an unusual circumstance and our waiver of the rules here should not be construed as a change in our policies or procedures regarding Advice Letter filings. In the future, we encourage Public Service to follow the procedures and rules.

7. Therefore, on the Commission's own motion, we waive the requirements of 4 CCR 723-1-41 regarding the filing of this Advice Letter.

II. ORDER

A. The Commission Orders That:

1. On the Commission's own motion, we waive the notice and filing requirements for advice letters as required in 4 *Code of Colorado Regulations* 723-1-41 in this instance.

2. Public Service Company of Colorado's Advice Letter No. 1415 and accompanying tariffs are effective as of June 1, 2004.

3. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 8, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners