

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-399E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING EXPENSES INCURRED FOR THE PERIOD JANUARY 2003 THROUGH DECEMBER 2003 THAT ARE RECOVERED THROUGH THE INTERIM ADJUSTMENT CLAUSE AND APPROVING THE CALCULATION OF 2003 SHORT TERM SALES MARGINS.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
NOTICING WAIVER, VACATING PREHEARING
CONFERENCE, GRANTING JOINT MOTION,
SETTING HEARING DATE, ESTABLISHING
PROCEDURAL SCHEDULE, MODIFYING
DISCOVERY RESPONSE TIME, AND
WAIVING RESPONSE TIME**

Mailed Date: November 18, 2004

I. STATEMENT

1. On August 2, 2004, Public Service Company of Colorado (PSCo or Applicant), filed an Application in which it seeks a Commission order approving expenses that were incurred in calendar year 2003 and are recovered through the Interim Adjustment Clause and a Commission order approving the calculation of 2003 short term sales margins (Application). When it filed the Application, PSCo filed the direct testimony and exhibits of Messrs. Wolaver, Uebelhoer, and Anderson. The Application commenced this docket.

2. The Commission gave public notice of the Application. *See* Notice of Application Filed, dated August 4, 2004.

3. On August 16, 2004, Holy Cross Energy (HCE) filed a Petition for Leave to Intervene. On that same date HCE and PSCo filed a Stipulation under the terms of which PSCo does not object to the granting of the Petition so long as HCE remains on the service list but is not an active participant in this proceeding. By Decision No. R04-1123-I the undersigned Administrative Law Judge (ALJ), to whom this matter is assigned, granted the Petition subject to conditions. As a result, HCE is not an active participant in this proceeding.

4. The Colorado Office of Consumer Counsel (OCC) intervened in this proceeding of right and requested a hearing. Staff of the Commission (Staff) filed its intervention of right and request for hearing.

5. OCC, Staff, and Applicant are the only active parties in this proceeding.

6. The Commission deemed the Application complete as of September 20, 2004.

7. By Decision No. R04-1123-I the ALJ scheduled a prehearing conference for October 20, 2004. By telephone conference held on October 19, 2004, OCC, Staff, and Applicant proposed a procedural schedule and hearing dates. Because she found the proposal to be acceptable, the ALJ vacated the scheduled prehearing conference by an oral order. This Order memorializes that previous order.

8. On November 16, 2004, OCC, Staff, and Applicant filed a Joint Motion for Approval of Proposed Procedural Schedule (Joint Motion). In that filing PSCo waives the requirements of § 40-6-109.5, C.R.S. Thus, the Commission need not issue its decision in this matter within the time frames of that statutory provision. In view of this waiver, the ALJ finds the procedural schedule proposed by the active parties, as modified below, to be acceptable.

9. The Joint Motion states good cause, and granting the Joint Motion will not prejudice any party. The Joint Motion will be granted.

10. The following procedural schedule and hearing dates will be adopted: (a) on or before **February 25, 2005**, OCC and Staff each will file its answer testimony and exhibits; (b) on or before **April 1, 2005**, PSCo will file its rebuttal testimony and exhibits; (c) on or before **April 1, 2005**, OCC and Staff each will file its cross-answer testimony and exhibits;¹ (d) on or before **April 19, 2005**, each party will file its corrected testimony and exhibits; (e) on or before **April 19, 2005**, each party will file its prehearing motions;² (f) on or before **April 19, 2005**, the parties will file any stipulation reached; and (g) hearing in this proceeding will be held on **April 26 and 27, 2005**.

11. At the time a prehearing motion is filed and at the time a stipulation is filed, the party making the filing shall provide a copy of the motion or the stipulation directly to the ALJ in her office. This requirement does not reduce the number of copies which must be filed with the Commission.

12. No final prehearing conference will be scheduled at this time. Should a party believe that such a conference would be beneficial or is necessary, that party may file an appropriate motion to schedule a final prehearing conference.

13. No date for submission of post-hearing statements of position was suggested. The question of whether such statements of position should be filed (and, if so, when) will be discussed following the hearing.

14. The provisions of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-77 govern discovery in this proceeding *except as follows*: response time to discovery directed to rebuttal

¹ Cross-answer testimony and exhibits may address *only* the answer testimony and exhibits of another intervenor.

² Oral response to a prehearing motion may be made as a preliminary matter on the first day of hearing.

testimony and exhibits and response time to discovery directed to cross-answer testimony and exhibits will be shortened to seven calendar days.

15. Rule 4 CCR 723-1-22(d)(3) states: “If a pleading refers to new court cases or other authorities not readily available to the Commission, six copies of each case or other authority shall be filed with the pleading.” If a party wishes the ALJ to consider a cited authority *other than* an opinion of the United States Supreme Court, a reported Colorado state court opinion, or a Commission decision, the party must provide copies of that cited authority.

16. The parties (and their witnesses) must provide the decision number when referring to or citing a Commission decision.

17. Because all active parties submitted the Joint Motion, response to the Joint Motion will be waived.

II. ORDER

A. It Is Ordered That:

1. The prehearing conference scheduled for October 20, 2004, is vacated.
2. The provisions of § 40-6-109.5, C.R.S., do not apply to this proceeding.
3. The Joint Motion for Approval of Proposed Procedural Schedule is granted, and the procedural schedule proposed in that filing (as modified by this Order) is adopted.
4. Hearing in this matter shall be conducted on the following dates, at the following times, and in the following location:

DATES: April 26 and 27, 2005
TIME: 9:00 a.m. each day
PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

5. The procedural schedule in this docket is: (a) on or before February 25, 2005, the Office of Consumer Counsel, and Staff of the Commission each shall file its answer testimony and exhibits; (b) on or before April 1, 2005, Public Service Company of Colorado shall file its rebuttal testimony and exhibits; (c) on or before April 1, 2005, the Office of Consumer Counsel and Staff of the Commission each shall file its cross-answer testimony and exhibits; (d) on or before April 19, 2005, each party shall file its corrected testimony and exhibits; (e) on or before April 19, 2005, each party shall file its prehearing motions; and (f) on or before April 19, 2005, the parties shall file any stipulation reached.

6. The response time stated in Rule 4 *Code of Colorado Regulations* 723-1-77 is modified as set forth above.

7. The parties shall follow the procedures and shall make the filings set out above.

8. Response to the Joint Motion for Approval of Proposed Procedural Schedule is waived.

9. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

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