

Decision No. C14-0530

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13F-0110EG

A-QUARTER CIRCLE LAZY FIVE RANCH, LLC AKA ABEYTA RANCHES,
ALPHONZO A. ABEYTA, PARTNER, ANDREW ABEYTA, PARTNER,
MARTHA ABEYTA, PARTNER & LORAINN ABEYTA, PARTNER,

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

COMMISSION DECISION DENYING EXCEPTIONS

Mailed Date: May 19, 2014

Adopted Date: May 14, 2014

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I. BY THE COMMISSION**A. Statement**

1. On April 24, 2014, A-Quarter Circle Lazy Five Ranch, LLC, also known as Abeyta Ranches, Alfonzo Abeyta, Andrew A. Abeyta, Martha Abeyta, and Loriann Abeyta (collectively, Ranch¹), filed exceptions to Decision No. R14-0369 (Recommended Decision). The Ranch takes exception to three findings of the Administrative Law Judge (ALJ) in the Recommended Decision: 1) reasonableness of Public Service Company of Colorado's (Public Service) modified vegetation management schedule; 2) the Ranch's failure to establish "accepted engineering practices" for purposes of Rule 3200(a) of the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3; and 3) denying admittance of certain photographic evidence. We deny the exceptions filed by the Ranch.

B. Background

2. This proceeding addresses a complaint arising out of an electrical service outage that occurred in Conejos County, Colorado, on May 23, 2012. A branch of a tree fell in high winds and disrupted electrical service to an irrigation system that watered alfalfa belonging to the Ranch. The Ranch filed a complaint on February 13, 2013, which was amended on May 3, 2013 (Complaint), alleging that Public Service failed to remove the tree branch in violation of vegetation management standards in its Tariff and Commission Rules.²

¹ The Complaint identifies A-Quarter Circle Lazy Five Ranch, LLC, as a limited liability company, with Alfonzo A. Abeyta, Andrew A. Abeyta, Martha Abeyta, and Loriann Abeyta as partners.

² The Ranch also initially claimed that Public Service failed to properly test, install, and maintain its safety systems, but abandoned this claim as noted in the Recommended Decision at ¶¶ 22-28. The Complaint also includes arguments related to negligence, causation, and money damages, which the ALJ clarifies are not decided under Commission jurisdiction. Recommended Decision, ¶¶ 30-41.

3. After two days of evidentiary hearing and based on the record evidence, the ALJ issued the Recommended Decision: 1) clarifying the scope of the proceeding as limited to vegetation management issues in the Complaint; and 2) finding that the Ranch failed to meet its burden in showing that Public Service did not comply with vegetation management standards set forth in the National Electric Safety Code (NESC), which is incorporated into Public Service's Tariff Sheet R100.³

4. The ALJ determined that Public Service may modify its maintenance cycle to account for changed circumstances and still be compliant with the NESC and Tariff Sheet R100; she did not find evidence presented convincing that Public Service failed to comply with the NESC or tariffs. In addressing whether Public Service violated Commission Rules as alleged by the Ranch, the ALJ found that the Ranch failed to establish the NESC as the relevant "accepted engineering practice" for purposes of Rule 3200, and found no violation of Commission Rules. She therefore dismissed the Complaint.

5. The Ranch filed exceptions to the Recommended Decision on April 24, 2014, challenging certain findings in the Recommended Decision. Public Service filed a response to the exceptions on May 1, 2014, requesting that all exceptions be denied.

³ As relevant here, Sheet No. R100 of the Tariff provides: "The Company will ... maintain its electric system in such a manner as to furnish good, safe, adequate, and continuous electric service *in accordance with the provision of the National Electric Safety Code* [NESC] and the Rules and Regulations of the Public Utilities Commission of the State of Colorado."

C. Exceptions

1. Reasonableness of the Modified Schedule

6. After maintenance at the end of the 2008 growing season, Public Service postponed scheduled vegetation management twice: first from approximately May 2011 to May 2012; and from May 2012 to September 2012. The ALJ found that Public Service had reasonably performed vegetation management when making these schedule determinations to delay maintenance in view of its experience, consistent with the NESC.

7. Pursuant to NESC § 218, vegetation management is the process of pruning or removing “[v]egetation that may damage ungrounded supply conductors.” Section 214.A.2 states in part:

[L]ines and equipment shall be inspected at such intervals as experience has shown to be necessary.

8. In addition, § 218.A.1 of the NESC identifies the following as factors for a utility to consider in this process:

Factors to consider in determining the extent of vegetation management required include, but are not limited to: line voltage class, species’ growth rates and failure characteristics, right-of-way limitations, the vegetation’s location in relation to the conductors, the potential combined movement of vegetation and conductors during routine winds, and sagging of conductors due to elevated temperatures or icing.

9. The ALJ found Public Service had a “sound and reasonable basis for the decision to extend the maintenance cycle [to May 2012]...; there had been below-normal precipitation..., and this had the effect of slowing the growth rate of the vegetation.”⁴ She also considered the experience of Public Service witness Hamm who made the decision, including his

⁴ Recommended Decision, ¶ 129.

personal knowledge of the area.⁵ In addition, the ALJ found the delay in maintenance until September 2012 was reasonable and based on “unrefuted and un rebutted” testimony, which she found “credible and ... reasonable.”⁶

10. On exceptions, the Ranch disagrees with the ALJ’s findings and argues that, if the scheduled maintenance had commenced in May 2012, the branch at issue would have been identified and the incident would have been avoided.

11. We agree with the Recommended Decision that the NESC permits revision of a utility’s maintenance schedule due to consideration of the circumstances; to find otherwise would require a utility to waste time, money, and resources on unnecessary maintenance.⁷ Public Service’s determination to delay the maintenance schedule based on its expertise and experience was reasonable in these circumstances. We agree with the ALJ that the Ranch did not meet its burden to show that Public Service improperly extended its vegetation maintenance schedule.⁸ We deny the exception.

2. “Accepted Engineering Practice”

12. The ALJ determined that the Ranch failed to establish a violation of Rule 3200 because the Ranch did not establish the NESC as the “accepted industry practices” required by that Rule.⁹ In relevant part, Rule 3200(a) states:

⁵ *Id.*, ¶ 77, fn 31

⁶ *Id.*, ¶ 78, fn 32

⁷ *See also* Recommended Decision, ¶ 133 (recognizing that disallowing revision of the schedule would result in an unreasonable burden on Public Service and would place an unreasonable financial burden on Public Service ratepayers who pay for operations and maintenance expenses in rates).

⁸ *See*, Recommended Decision, ¶ 122-134.

⁹ *Id.*, ¶¶ 116-121.

The plant, equipment, and facilities of a utility shall be constructed, installed, inspected, maintained, and operated *in accordance with accepted engineering practice in the electric industry* to assure continuity of service, uniformity in the quality of service, and the safety of persons and property.¹⁰

13. The ALJ determined that a careful reading of the rule shows that the Commission has not adopted NESC as the minimum standard for accepted engineering practice for vegetation management in this instance.¹¹ She found “the Ranch failed to establish a violation of [Rule 3200(a)]” because “there is no evidence in this Proceeding that connects the NESC to the electric industry’s accepted engineering practice during the relevant time period.”¹²

14. On exceptions, the Ranch contends that NESC standards are “undisputed” as the accepted engineering practice and includes additional information arguing that these standards are accepted by the industry. The Ranch argues that the ALJ’s findings are in error and “suggests an unfamiliarity with the electric industry....”¹³

15. We agree with the ALJ that the rule does not incorporate the NESC as the industry standard for purposes of Rule 3200(a). It is the Ranch’s burden to show that the NESC is the applicable standard under Rule 3200. We agree with the ALJ that, for purposes of showing a violation of Rule 3200, the Ranch did not establish the NESC as the relevant standard. In addition, even if the NESC standards were applied under Rule 3200, the ALJ found Public Service’s actions complied with the NESC standards, thus disproving the Ranch’s claim under Rule 3200. This exception is denied.

¹⁰ Rule 3200(a) (emphasis added).

¹¹ Recommended Decision, ¶¶ 116-121.

¹² *Id.*, ¶ 117.

¹³ Exceptions, ¶ 10.

3. Denying Admittance of Certain Photographic Evidence

16. The Ranch takes exception to the ALJ denying the introduction of certain photos taken by Ranch witness Palmer depicting trees in the vicinity.¹⁴ The Ranch argues that this photographic evidence would have shown these trees had the potential of falling across distribution lines in the event of strong, routine winds that occur in the area in May and June. The Ranch contends this evidence would demonstrate Public Service violated Rule 3200 and failed to maintain or operate its plant in accordance with “accepted engineering practices.”

17. The ALJ disallowed the photographic evidence because it was cumulative. Palmer had testified that he had observed trees “overhanging” the power line,¹⁵ and the ALJ gave due weight to this testimony. The ALJ considered the relevant evidence in making her determinations; it was within her discretion to deny admitting these photos as cumulative evidence. The exception is denied.

II. ORDER

A. The Commission Orders That:

1. The exceptions filed April 24, 2014, by A-Quarter Circle Lazy Five Ranch, LLC, also known as Abeyta Ranches, Alfonzo Abeyta, Andrew A. Abeyta, Martha Abeyta, and Loriann Abeyta, are denied consistent with the discussion above.

2. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

3. This Decision is effective on its Mailed Date.

¹⁴ Exceptions, ¶ 7.

¹⁵ See Dr. Palmer Preliminary Report – Hearing Exhibit 25 p.2; see also 10/29/14 transcript, p.73 lines 2-16.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 14, 2014.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAMELA J. PATTON

GLENN A. VAAD

Commissioners

CHAIRMAN JOSHUA B. EPEL
ABSENT.