

Decision No. C14-1103

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0491G

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AUTHORIZATION TO CONTINUE IN EFFECT AND TO EXTEND FOR AN ADDITIONAL THREE-YEAR PERIOD THE CURRENT PROCEDURES FOR SEEKING AND OBTAINING AUTHORIZATION TO IMPLEMENT ANNUAL GAS PRICE VOLATILITY MITIGATION PLANS FOR ITS GAS SALES CUSTOMERS.

**DECISION GRANTING MOTION FOR LEAVE TO FILE
RESPONSE AND DENYING APPLICATION FOR
REHEARING, REARGUMENT, OR RECONSIDERATION**

Mailed Date: September 12, 2014
Adopted Date: September 3, 2014

I. BY THE COMMISSION

A. Statement

1. This Decision considers the Application for Rehearing, Reargument, or Reconsideration (RRR) filed by East Cheyenne Gas Storage, LLC (East Cheyenne or the Company) on August 18, 2014, which challenges the Commission's Decision denying East Cheyenne's intervention in this proceeding.

2. On May 15, 2014, Public Service Company of Colorado (Public Service) filed an application to extend its Gas Price Volatility Mitigation (GPVM) procedures for an additional three years and for authorization to implement its annual GPVM Plans. East Cheyenne filed a Motion to Intervene and Request for Hearing (Motion to Intervene) on June 4, 2014. East Cheyenne's Motion to Intervene alleged it owns and operates a gas storage facility used by a variety of market participants, including natural gas marketers on the Public Service system and natural gas suppliers to Public Service, to hedge gas supply costs in the Front Range market.

East Cheyenne contended: “Because this proceeding *may impact the gas storage market* by determining the percentage of winter gas volumes PSCo must hedge through physical storage, [East Cheyenne] may be impacted by PSCo’s GPVM plan.” Motion to Intervene, at ¶ 3 (emphasis added). East Cheyenne neither supported nor opposed Public Service’s application, but it asserted a formal evidentiary hearing was necessary to determine the benefits of alternative hedging programs and the percentage of winter gas volumes Public Service should hedge using physical storage. *Id.*, at ¶¶ 4, 6.

3. The Commission’s Decision, Decision No. C14-0889 issued July 29, 2014, granted Public Service’s application. The Decision also denied East Cheyenne’s Motion to Intervene, because it did not meet the standards for permissive intervention under Rules 1401(a) and 1401(c) of the Commission’s *Rules of Practice and Procedure*, 4 *Code of Colorado Regulations* 723-1. The Commission found East Cheyenne did not satisfy the requirement to show a substantial effect to its pecuniary or tangible interests, because the Motion to Intervene asserted an interest based upon the effect the proceeding has on the gas storage market, but not upon East Cheyenne as a customer of, or vendor for, Public Service. Decision, at ¶ 8. The Motion to Intervene also did not satisfy the rule’s requirement to state whether the application is contested or opposed and to provide a basis for that position. *Id.*

4. East Cheyenne’s RRR clarifies it is not contesting the Commission’s Decision to grant Public Service’s application to extend the GPVM Plan. RRR, at 1. Despite its agreement with the outcome of this proceeding, East Cheyenne objects to the Commission’s denial of its Motion to Intervene, because the denial “could be used by PSCo or other regulated entities to bar [East Cheyenne] from intervening in future proceedings involving the degree to which PSCo is authorized to use physical storage facilities to hedge their natural gas portfolio.” *Id.*, at 2.

5. East Cheyenne's RRR asserts Public Service's application affects its pecuniary and tangible interests as required by Rule 1401(c). East Cheyenne says its interest is not "generalized," and claims a motion to intervene satisfies the rule if the proceeding *may* affect the movant's pecuniary interests. East Cheyenne says its pecuniary interests are affected here because limits set on gas storage for hedging affect Public Service's ability to purchase storage services and East Cheyenne's ability to sell such services. Further, East Cheyenne cites other Commission cases in which it granted intervention though the movants were not existing customers of the utility.¹

6. East Cheyenne's RRR also argues the Motion to Intervene satisfied Rule 1401(a)'s requirement to state that the application was contested or opposed, because it requested a formal evidentiary hearing to determine the benefits of alternative hedging programs and the percentage of winter gas volumes that Public Service should hedge with physical storage. RRR, at 7-8. East Cheyenne also introduces an argument not mentioned in its Motion to Intervene – that discovery of confidential information was necessary to formulate a position on Public Service's application. *Id.* East Cheyenne therefore contends it "contested" Public Service's application.

7. Public Service filed a Motion for Leave to File a Response to the Application for RRR (Motion for Leave) on September 2, 2014. A substantive response to the RRR accompanied Public Service's Motion for Leave. The Commission grants Public Service's Motion for Leave and accepts its response into the record.

¹ The intervenors cited include: Energy Recovery Specialists, LLC, Decision No. C12-1102-I, Proceeding No. 12A-851E issued September 21, 2012; C12 Energy, Inc., Decision No. C11-1391, Proceeding No. 11A-869E issued January 3, 2012; and Interwest Energy Alliance, Decision No. C14-0616-I, Proceeding No. 14A-0302E issued June 9, 2014.

B. Discussion

8. We affirm our Decision and conclusion that East Cheyenne's Motion to Intervene did not state interests sufficient to satisfy Rule 1401. Neither the Motion to Intervene nor the RRR asserts East Cheyenne is or potentially will be a vendor or customer of Public Service. East Cheyenne's interest, as stated in its Motion to Intervene was: "this proceeding may impact the gas storage market by determining the percentage of winter gas volumes PSCo must hedge through physical storage." Motion to Intervene at ¶ 3. East Cheyenne's RRR cites to the GPVM procedures and says "such provisions [impact] the gas storage market, of which [East Cheyenne] is a participant." RRR at 3. Under the circumstances of this proceeding, East Cheyenne's participation in a market in which a utility also participates does not meet Rule 1401(c)'s requirement of a pecuniary and tangible interest.

9. Our ruling that East Cheyenne did not satisfy the requirement to show a pecuniary interest renders moot the issue of whether East Cheyenne satisfied Rule 1401(a)'s requirement that a motion to intervene assert that the application is contested or opposed.

10. Intervention is a fact-specific inquiry based upon the assertion of interests stated in a motion, and our rulings here do not restrict East Cheyenne from demonstrating in any future case how a Commission proceeding may affect its pecuniary interests under Rule 1401.

II. ORDER**A. The Commission Orders That:**

1. East Cheyenne Gas Storage, LLC's Application for Rehearing, Reargument, or Reconsideration (RRR) is denied consistent with the discussion above.

2. Public Service Company of Colorado's Motion for Leave to File a Response to East Cheyenne's Application for RRR is granted.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 3, 2014.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners