

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13AL-0958E

IN THE MATTER OF ADVICE LETTER NO. 1649 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO IMPLEMENT A NEW METHODOLOGY TO DERIVE PAYMENT RATES APPLICABLE TO QUALIFYING FACILITIES (“QFS”) WITH A DESIGN CAPACITY BETWEEN 10 AND 100KW, TO BECOME EFFECTIVE SEPTEMBER 27, 2013.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTION FOR ADMISSION *PRO HAC*
VICE; PERMITTING APPEARANCE *PRO HAC VICE*;
NOTING WITHDRAWAL OF COUNSEL; SUBJECT TO
CONDITION, GRANTING UNOPPOSED MOTION TO
MODIFY; SUBJECT TO CONDITION, RESCHEDULING
EVIDENTIARY HEARING; SUBJECT TO CONDITION,
MODIFYING PROCEDURAL SCHEDULE; REQUIRING
PUBLIC SERVICE TO MAKE FILING; AND WAIVING
RESPONSE TIME TO MOTION TO MODIFY**

Mailed Date: January 14, 2014

I. STATEMENT

1. On August 27, 2013, Public Service Company of Colorado (Public Service, PSCo, or Company), filed Advice Letter No. 1649-Electric (Advice Letter) to implement a new method to derive payment rates for Qualifying Facilities with a design capacity between 10 and 100 kilowatts (kW) in Public Service’s Electric Purchase - Small Power Production and Cogeneration Facility Policy Section of PSCo’s P.U.C. No. 7-Electric tariff. Accompanying the Advice Letter are proposed tariff sheets that, if in effect, would implement the new method.

2. On September 25, 2013, by Decision No. C13-1196, the Commission set this matter for hearing, thus suspending the effective date of the proposed tariff sheets that

accompanied the Advice Letter. The initial suspension period expires on January 25, 2014. On October 30, 2013, Decision No. R13-1367-I further suspended, to and including April 25, 2014, the effective date of those proposed tariff sheets.

3. The following intervened as of right or were granted permission to intervene: Trial Staff of the Commission (Staff); the Vote Solar Initiative (Vote Solar); and Western Colorado Power Company, LLC (WCPC).

4. Staff, Vote Solar, and WCPC, collectively, are the Intervenors. The Company and the Intervenors, collectively, are the Parties. All Parties are represented by legal counsel.

5. In Decision No. C13-1196, the Commission referred this proceeding to an Administrative Law Judge (ALJ).

6. The procedural history of this Proceeding is set out in Interim Decisions previously issued in this matter. The ALJ repeats the procedural history as necessary to put this Interim Decision in context.

A. Motion for Admission *Pro Hac Vice*.

7. On December 31, 2013, Jill M. Tauber, Esquire, filed a Verified Motion to Appear *Pro Hac Vice* on Behalf of the Vote Solar Initiative (Tauber Motion). This filing was made pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a),¹ which governs the admission of attorneys not licensed to practice law in Colorado. Rule 4 CCR 723-1-1201(a) requires compliance with Colorado Rule of Civil Procedure (Colo.R.Civ.P.) 221.1.

¹ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

8. On January 8, 2014, the Commission received a notice from the Attorney Registration Office of the Supreme Court of Colorado. The notice advises the Commission that Ms. Tauber has been assigned a *Pro Hac Vice* registration number with respect to this case.

9. The ALJ has reviewed the Tauber Motion, the Attorney Registration Office notice, and the requirements of Colo.R.Civ.P. 221.1. The ALJ finds that Ms. Tauber has complied with Rule 4 CCR 723-1-1201(a) and Colo.R.Civ.P. 221.1, that the Tauber Motion states good cause, and that no party will be prejudiced if the Tauber Motion is granted. By this Interim Decision, the ALJ will grant the Tauber Motion and will admit Ms. Tauber *pro hac vice* to represent Vote Solar in this matter.

B. Withdrawal of Counsel.

10. On December 31, 2013, Susan L. Perkins, Esquire, of the law firm Perkins Ruschena, LLC (Perkins Ruschena), filed (in one document) the Entry of Appearance of Edward B. Zukoski on Behalf of the Vote Solar Initiative and Notice of Withdrawal of Counsel Perkins Ruschena, LLC.

11. This Interim Decision addresses the Notice of Withdrawal of Counsel Perkins Ruschena, LLC (Notice). In that filing, Perkins Ruschena gave notice of its withdrawal as counsel of record for Vote Solar in this Proceeding.

12. Rule 4 CCR 723-1-1201(d) governs the process by which an attorney may withdraw as counsel of record for a party. The Notice meets the requirements of that Rule.

13. In accordance with Rule 4 CCR 723-1-1201(d), Perkins Ruschena advised Vote Solar of its right to file an objection. Notice at 2. The time for filing an objection has expired. As of the date of this Interim Decision, Vote Solar has not filed an objection.

14. By this Interim Decision, the ALJ will give notice, and will acknowledge, that Perkins Ruschena has withdrawn as counsel of record for Vote Solar.

C. Hearing Date and Procedural Schedule.

15. On November 18, 2013, by Decision No. R13-1443-I, the ALJ scheduled the evidentiary hearing in this matter for January 30 and 31, 2014; established the procedural schedule; and addressed a number of procedural matters. As adopted, the procedural schedule permits the Commission to issue its decision in this Proceeding by April 25, 2014, which is the expiration of the suspension period of the proposed tariff sheets' effective date.

16. Pursuant to the procedural schedule, Public Service filed its direct testimony and exhibits on December 3, 2013.

17. Pursuant to the procedural schedule, Intervenors were to file their answer testimony and exhibits on January 3, 2014. On January 3, 2014, by Decision No. R14-0009-I and pursuant to motion, ALJ Adams modified the procedural schedule and changed the date by which Intervenors' answer testimony was to be filed. Except as modified, the procedural schedule remains as established in Decision No. R13-1443-I.

18. Pursuant to Decision No. R14-0009-I, Intervenors filed their answer testimony and exhibits on January 9, 2014.²

² On January 9, 2014, WCPC filed, through the Commission's E-Filing System, its answer testimony and exhibits. No certificate of service accompanied that filing. On January 10, 2014, WCPC filed a Statement of Technical Difficulty and Procedure for Expedited Relief. In that filing, WCPC explains its unsuccessful attempts on January 9, 2014 timely to file the certificate of service pertaining to its answer testimony and exhibits. WCPC states that, on January 10, 2014, it filed the certificate of service. WCPC also states that, on January 9, 2014, it sent an electronic mail notice, with the certificate of service attached, to the Parties and the ALJ. The Statement of Technical Difficulty and Procedure for Expedited Relief meets the requirements of Rule 4 CCR 723-1-1211(d)(I), and the certificate of service is deemed filed on January 9, 2014.

19. Pursuant to the procedural schedule established in Decision No. R13-1443-I, rebuttal testimony and exhibits and cross-answer testimony and exhibits are to be filed not later than January 17, 2014.

20. On January 13, 2014, Public Service filed an Unopposed Motion to Modify and Extend Procedural Schedule and Request for Expedited Ruling.

21. The Request for Expedited Ruling states good cause. As the Motion to Modify and Extend Procedural Schedule (Motion to Modify) is unopposed, no party will be prejudiced if the Request for Expedited Ruling is granted and response time is waived. The ALJ will grant the Request for Expedited Ruling and will waive response time to the Motion to Modify.

22. As good cause for granting the relief sought in the Motion to Modify, the Company states: (a) as modified to permit Intervenors to file their answer testimony and exhibits on January 9, 2014, the procedural schedule does not allow sufficient time for Public Service to analyze the voluminous answer testimony and exhibits and to determine its response to those filings; (b) due to the unavailability of PSCo personnel over the holidays, there is a remaining discovery request to which Public Service will respond not later than January 14, 2014, and this may result in the filing of supplemental answer testimony and exhibits; (c) the Parties have agreed to the modified procedural schedule presented in the Motion to Modify at ¶ 4; and (d) to accommodate the proposed procedural schedule modifications, Public Service “will file an amended advice letter, with a new effective date 30 days after filing, and with no other changes” (Motion to Modify at ¶ 5). Public Service represents that the Motion to Modify is unopposed.

23. The Motion to Modify states good cause. As the Motion to Modify is unopposed, granting the Motion to Modify will not prejudice any party. The ALJ will grant the Motion to Modify, subject to the following condition: not later than **January 17, 2014**, Public Service will

file an amended Advice Letter No. 1649-Electric that conforms to the representations stated in the Motion to Modify at ¶ 5 (and quoted above). If Public Service does not file the amended Advice Letter, the Motion to Modify is denied and the procedural schedule and hearing dates established in Decision No. R13-1443-I (as modified by Decision No. R14-0009-I) remain in effect.³

24. Subject to the condition stated above, the ALJ will modify the procedural schedule as follows: (a) not later than **January 31, 2014**, Public Service will file its rebuttal testimony and exhibits; (b) not later than **January 31, 2014**, each intervenor will file its cross-answer testimony and exhibits;⁴ (c) not later than **February 14, 2014**, each party will file its prehearing motions, including any dispositive motions; (d) not later than **February 14, 2014**, each party will file its corrected testimony and exhibits; (e) not later than **February 14, 2014**, the Parties will file any stipulation or settlement agreement reached; (f) the evidentiary hearing will be held on **February 20 and 21, 2014**; and (g) not later than **March 10, 2014**, each party will file its post-hearing statement of position, to which no response will be permitted.

25. Except as modified by Decision No. R14-0009-I and this Interim Decision, the provisions of Decision No. R13-1443-I remain in effect and govern this Proceeding.

II. ORDER

A. **It Is Ordered That:**

1. The Verified Motion of Jill M. Tauber to Appear *Pro Hac Vice* on Behalf of the Vote Solar Initiative is granted.

³ By electronic mail dated January 14, 2014, the ALJ informed counsel of this ruling.

⁴ Cross-answer testimony responds only to the answer testimony of another intervenor.

2. Jill M. Tauber, Esquire, is admitted *pro hac vice* as counsel for the Vote Solar Initiative in this Proceeding.

3. The Notice of Withdrawal of Counsel Perkins Ruschena, LLC., filed on December 31, 2013 by Susan L. Perkins, Esquire, of the law firm Perkins Ruschena, LLC, is acknowledged.

4. Perkins Ruschena, LLC, is no longer counsel of record for the Vote Solar Initiative in this Proceeding.

5. Consistent with the discussion above, the Motion to Modify and Extend Procedural Schedule is granted, subject to the following condition: not later than January 17, 2014, Public Service Company of Colorado (Public Service) shall file an amended Advice Letter No. 1649-Electric that conforms to the representations contained in the Motion to Modify and Extend Procedural Schedule at ¶ 5 (and quoted above).

6. If the condition contained in Ordering Paragraph No. 5 is met, the evidentiary hearing scheduled for January 30 and 31, 2014 is vacated.

7. If the condition contained in Ordering Paragraph No. 5 is met, the evidentiary hearing in this matter is scheduled for the following dates, at the following times, and in the following location:

DATES:	February 20 and 21, 2014
TIME:	9:00 a.m. each day
PLACE:	Commission Hearing Room 1560 Broadway, Suite 250 Denver, Colorado

8. If the condition contained in Ordering Paragraph No. 5 is met, and consistent with the discussion above, the following procedural schedule is adopted: (a) not later than

January 31, 2014, Public Service shall file its rebuttal testimony and exhibits; (b) not later than January 31, 2014, each intervenor shall file its cross-answer testimony and exhibits; (c) not later than February 14, 2014, each party shall file its prehearing motions, including any dispositive motions; (d) not later than February 14, 2014, each party shall file its corrected testimony and exhibits; (e) not later than February 14, 2014, the Parties shall file any stipulation or settlement agreement reached; and (f) not later than March 10, 2014, each party shall file its post-hearing statement of position, to which no response will be permitted.

9. If the condition contained in Ordering Paragraph No. 5 is not met, the Motion to Modify and Extend Procedural Schedule is denied.

10. If the condition contained in Ordering Paragraph No. 5 is not met, the procedural schedule and hearing dates established in Decision No. R13-1443-I, as modified by Decision No. R14-0009-I, remain in effect.

11. Except as modified by Decision No. R14-0009-I and this Interim Decision, the provisions of Decision No. R13-1443-I remain in effect and govern this Proceeding.

12. The Request for Expedited Ruling is granted.

13. Response time to the Unopposed Motion to Modify and Extend Procedural Schedule is waived.

14. Parties are held to the advisements in the Interim Decisions issued in this Proceeding.

15. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director