

Decision No. R14-0556-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0287E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO (A) FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE PAWNEE TO DANIELS PARK 345 KV TRANSMISSION PROJECT, AND (B) FOR SPECIFIC FINDINGS WITH RESPECT TO EMF AND NOISE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING INTERVENTION**

Mailed Date: May 23, 2014

I. STATEMENT

1. On March 28, 2014, Public Service Company of Colorado (Public Service or Company) filed an application for a Certificate of Public Convenience and Necessity for its proposed Pawnee to Daniels Park 345 kV Transmission Project (Application). Additionally, Public Service requested the Commission make specific findings with respect to the reasonableness of the noise and magnetic field levels the Company estimates will result from operating the project. Public Service filed the Application with supporting Direct Testimony and Exhibits.

2. The Commission gave notice of the application on April 2, 2014. Requests for permissive intervention were due within 30 days thereafter. An Intervention by Staff of the Public Utilities Commission was due within 37 days thereafter.

3. By C14-0553-I issued May 23, 2014, the matter was referred to an administrative law judge to conduct a public comment hearing and for preparation of a recommended decision.

4. In adopting the current rule governing intervention, the Commission summarized requirements for permissive intervention:

There are several requirements for permissive intervention. First, the Colorado Supreme Court interpreted the “will be interested in or affected by” language of § 40-6-109(1), C.R.S., to mean that a “substantial interest in the subject matter of the proceeding” is required. *Id.*, at 749. Accordingly, not every person, firm, or corporation that has any type of an interest in a Commission proceeding or will be affected in any way by a Commission order has a right to intervene. Second, even if the person or entity seeking intervention has an otherwise sufficient interest in a matter, courts and administrative agencies have discretion to deny intervention if that interest is represented adequately. This is the case even where the person or entity seeking intervention will be bound by the judgment of the case. *Denver Chapter of the Colo. Motel Ass’n v. City and County of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming a trial court’s denial of an intervention by certain taxpayers, under C.R.C.P. 24(a), in a lawsuit filed by the City and County of Denver against its auditor—because the interests of these taxpayers were represented by the city).¹ The test of adequate representation is whether or not there is an identity of interests, not discretionary litigation strategy of the representative. The presumption of adequate representation can be overcome by evidence of bad faith, collusion, or negligence on the part of the representative. *Id.*, *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

Decision No. C13-0442, Proceeding No. 12R-500ALL issued August 16, 2013, at para 43.

5. The rules require “an entity to demonstrate ... that it is positioned to represent that interest in a manner that will advance the just resolution of the proceeding.” *Id.* at para. 49.

6. On May 1, 2014, Colorado Energy Consumers’ Motion to Intervene and Request for Hearing was filed by the Colorado Energy Consumers (CEC), an unincorporated association of members identified within the motion.

7. CEC members include industrial and commercial customers operating facilities within the service territory of Public Service. They purchase electricity and related energy services from Public Service. CEC’s motion raises specified concerns regarding whether the

¹ The Commission is not strictly bound by the Colorado Rules of Civil Procedure (C.R.C.P.), but they are useful for purposes of analysis. Rule 1001 of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 provides that the Commission may seek guidance from the C.R.C.P.

public convenience and necessity requires the proposed facility be constructed at this time as well as concerns regarding any resulting rate impact.

8. The timely interventions of right of the Colorado Office of Consumer Counsel and Staff of the Public Utilities Commission are noted.

9. Consistent with the discussions above, good cause is shown to grant the request to intervene filed by CEC.

II. ORDER

A. It Is Ordered That:

1. The Colorado Energy Consumers' Motion to Intervene and Request for Hearing filed on May 1, 2014, by the Colorado Energy Consumers, an unincorporated association, is granted.

2. Timely interventions of right of the Colorado Office of Consumer Counsel and Staff of the Public Utilities Commission are noted.

3. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director