

Decision No. C20-0555-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0191E

IN THE MATTER OF ADVICE LETTER NO. 1825 – ELECTRIC FILED BY
PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO
P.U.C. NO. 8 – ELECTRIC TARIFF TO IMPLEMENT A COLORADO ENERGY PLAN
ADJUSTMENT AND REDUCE THE RENEWABLE ENERGY STANDARD ADJUSTMENT
TO BECOME EFFECTIVE JUNE 1, 2020.

**INTERIM DECISION ADDRESSING
LATE-FILED INTERVENTIONS**

Mailed Date: August 3, 2020
Adopted Date: July 29, 2020

I. BY THE COMMISSION

A. Statement

1. This Decision grants the late-filed intervention request filed by Staff of the Colorado Public Utilities Commission (Staff), Western Resource Advocates (WRA), and jointly by the Colorado Solar and Storage Association and the Solar Energy Industries Association (COSSA/SEIA).

2. As discussed below and consistent with Decision No. C20-0410, issued May 29, 2020, and Decision No. C20-0518-I, issued July 16, 2020, we remind parties that the scope of this proceeding remains on whether the requested Advice Letter No. 1825 and the filed tariffs are in the public interest. As required in Decision No. C20-0518-I, parties shall confer, including on the timing and manner in which Public Service Company of Colorado (Public Service or the Company) shall respond to the Commissioner questions, and provide a proposed procedural schedule no later than August 7, 2020.

B. Discussion

3. On May 1, 2020, Public Service filed Advice Letter No. 1825 with tariff sheets to implement a new rate adjustment mechanism called the Colorado Energy Plan Adjustment (CEPA) and to reduce the Renewable Energy Standard Adjustment (RESA) from 2 percent to 1 percent. The proposed effective date of the tariffs filed with Advice Letter No. 1825 is June 1, 2020.

4. Public Service proposes to put into effect the CEPA to recover the regulatory asset established as a result of early retirement of two of the coal-fired generation units at the Comanche Generating Station. Public Service states that the early retirements of Comanche 1 (by the end of 2022) and Comanche 2 (by the end of 2025) are components of the Colorado Energy Plan Portfolio approved by the Commission on September 10, 2018 in Decision No. C18-0761 in Proceeding No. 16A-0396E, Public Service's most recent Electric Resource Plan proceeding.

5. Public Service further explains that in a related case, Proceeding No. 17A-0797E, the Company sought Commission approval to: (1) modify the depreciation schedules for Comanche 1 and Comanche 2 and establish a regulatory asset to account for the costs of the accelerated depreciation; and (2) reduce the RESA from 2 percent to 1 percent and implement the CEPA at 1 percent of retail revenue coincident with the RESA reduction.

6. Through Decision No. C20-0410, issued May 29, 2020, the Commission set this matter for hearing *en banc* and suspended the effective dates of the tariff pages filed with Advice Letter No. 1825 pursuant to § 40-6-111(1), C.R.S. The Commission also set the intervention period. The Commission further explained that, before addressing the tariffs filed with Advice

Letter No. 1825, it is necessary to examine further the proposed reductions to the RESA surcharge.

7. The Commission noted that the Company's request to reduce the RESA to 1 percent comes before the Commission has completed its review and possible modifications to the Commission Rules. The Commission stated that additional information in this proceeding will serve to support a finding that the proposed RESA reduction applicable to Public Service at this time is in the public interest, notwithstanding the potential modifications in RESA-related general policies and rule revisions under review in Proceeding No. 19R-0096E.

8. Further, the Commission noted new statutory provisions in § 40-2-125.5, C.R.S., that implicate the RESA and future Commission determinations with respect to Public Service's forthcoming Clean Energy Plan filing expected in March 2021. For purposes of this proceeding, the Commission stated that additional information will help the Commission understand Public Service's expected need to use funds collected through the RESA in the near term given these statutory changes, as contemplated in Advice Letter No. 1825 and tariff sheets.

9. Finally, the Commission noted that additional information would be requested to support the filings submitted, including for example the absence of "Total RESA Costs" starting in 2023.

10. The Commission's order made clear that the purpose of initiating a hearing is not to reconsider the merits of the proposed CEPA. The Commission included that it is also mindful that stakeholder support for the presentation and adoption of the CEP Portfolio rested on the premise that the amortization of the regulatory asset created for the early retirement of Comanche 1 and 2 using a bill surcharge of 1 percent (*i.e.*, the CEPA) would be simultaneously offset with a reduction of the RESA of the same amount.

11. The Commission therefore stated that, through a separate decision, we would pose specific questions to Public Service regarding the proposed reduction of the RESA from 2 percent to 1 percent for the purposes of considerations of Advice Letter No. 1825 and the accompanying tariffs.

12. Interventions were permitted through June 26, 2020, with timely filings provided by the Office of Consumer Counsel (OCC), Colorado Energy Office (CEO), and Colorado Energy Consumers Group (CEC).

13. Through Decision No. C20-0518-I, issued July 16, 2020, the Commission recognized the timely notices of intervention of OCC and CEO, and granted CEC's request to permissively intervene. In addition, and consistent with Decision No. C20-0410, the Commission found it necessary to request additional information from Public Service to support Advice Letter No. 1825 and the concurrently filed tariff sheets. Parties were required to confer and provide, no later than August 7, 2020, a proposed procedural schedule that includes timing for the Company's response to the Commissioner questions. A prehearing conference is currently scheduled for August 20, 2020.

14. Prior to the issuance of Decision No. C20-0518-I on July 16, 2020, Staff, COSSA/SIEA, and WRA filed requests for late intervention. All three filers claim "good cause" in late filing, claiming that the Commission's questions expand the scope of the proceeding, despite the filings being made before the decision issued. Filers further state that their respective intervention requests are either not opposed or supported by parties to the proceeding.

15. For its part, Staff filed both a Motion for Leave to Intervene Late and a Notice of Intervention as of Right on July 9, 2020. Through its motion, Staff points out, however, that Rule 1401(d), 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of

Practice and Procedure, only permits Staff intervention as of right when it is timely filed. Through its notice, but not through the motion, Staff requests a hearing.

C. Interventions

16. Two classes of parties may intervene in proceedings such as this: parties with a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).

17. Commission Rule 1401(c) of the Rules of Practice and Procedure 4 CCR 723-1, requires persons seeking permissive to show the following, in part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.

18. Under Rule 1401(a), the Commission may "for good cause shown" allow late intervention, subject to reasonable procedural requirements.

19. Pursuant to Rule 1500, 4 CCR 723-1, the person seeking leave to intervene by permission bears the burden of proof with respect to the relief sought.

20. We disagree with late-filers' statements claiming that the scope of this proceeding is expanded. As discussed in Decision No. C20-0410, issued May 29, 2020, and reiterated in Decision No. C20-0518-I, issued July 16, 2020, the focus of this proceeding remains on the Company's filings at issue. However, given the change in statute and limited information provided with Advice Letter No. 1825 and the accompanying tariffs, further information is required to conclude whether the proposed RESA reduction remains in the public interest. The

Commission reiterates again that it is not relitigating past proceedings, rather requiring support and context for the Company's proposal.

21. Although we disagree with the statements made by Staff, WRA, and COSSA/SIEA, we nevertheless find it appropriate to grant the late-filed interventions, which are unopposed. Particularly at this early stage of the proceeding, no party is prejudiced by including these filers in the proceeding as requested. Parties are on notice that the proceeding shall remain narrowly focused,¹ including in the event that a hearing is necessary.²

22. Parties are reminded of their duty to confer on the schedule no later than August 7, 2020, which should include proposed timing and processes to address the Commissioner questions directed to Public Service in Decision No. C20-0518-I, and whether parties recommend that an evidentiary hearing is needed.³

II. ORDER

A. It Is Ordered That:

1. The motion to intervene filed by Staff of the Colorado Public Utilities Commission on July 9, 2020, is granted, consistent with the discussion above.

2. The motion to intervene filed by Western Resource Advocates on July 14, 2020, is granted, consistent with the discussion above.

¹ As stated in Decision No. C20-0518-I, the focus of this proceeding remains on whether the proposed Advice Letter and tariffs are in the public interest and should be approved. At the same time, the Commission recognizes that it is continuing its ongoing rulemaking that addresses updating rules of general applicability, which include potential revisions to the RESA. The Commission will provide additional processes, as necessary, in Proceeding No. 19R-0096E should prospective rules of general applicability regarding the RESA need further consideration and revision, as suggested by either the participants or Commission, given changed statutes or other factors.

² In the event Public Service's written responses are found sufficient, no evidentiary hearing may be required.

³ As noted, it is unclear if Staff is requesting a hearing on this matter based on the notice and motion filed.

3. The motion to intervene filed jointly by Colorado Solar and Storage Association and the Solar Energy Industries Association on July 10, 2020, is granted, consistent with the discussion above.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 29, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners