

Decision No. C20-0873-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0204E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2021-2023 TRANSPORTATION ELECTRIFICATION PLAN.

**INTERIM DECISION GRANTING UNOPPOSED MOTION
TO REOPEN EVIDENTIARY RECORD FOR LIMITED
PURPOSE OF TAKING ADMINISTRATIVE NOTICE OF
DOCUMENT IN COMMISSION FILES**

Mailed Date: December 9, 2020

Adopted Date: December 9, 2020

I. BY THE COMMISSION

A. Statement, Findings, Conclusions

1. By this Decision, the Commission grants the unopposed motion filed by Natural Resources Defense Council, Sierra Club, and Western Resource Advocates (the Environmental Organizations) on December 7, 2020, requesting the Commission reopen the evidentiary record in this Proceeding in order to take administrative notice of a document in its files (Motion). The Commission grants the unopposed Motion and reopens the evidentiary record solely for this limited purpose; otherwise, the evidentiary record in this Proceeding remains closed.

B. Motion

2. The Motion requests the Commission reopen the evidentiary record in this Proceeding in order to take administrative notice of Section VII of the Unopposed Comprehensive Settlement Agreement, and Motion to Approve Settlement Agreement (DSM Settlement Agreement), filed on December 3, 2020, by Public Service Company of Colorado (Public Service) in ongoing Commission Proceeding No. 20A-0287EG. Attachment A to the Motion contains the

DSM Settlement Agreement in its entirety, including the Section VII to which this narrow request for administrative notice pertains.

3. The Motion requests the Commission take administrative notice of the DSM Settlement Agreement as a “document in its files” consistent with Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1501(c) of the Commission’s Rules of Practice and Procedure.

4. In the Motion, the Environmental Organizations state there is overlap between issues in this Proceeding and Proceeding No. 20A-0287EG regarding Public Service’s proposed Charging Optimization program. They suggest certain provisions of the DSM Settlement Agreement may simplify some of the contested issues raised in this Proceeding, including some of the positions taken by the Environmental Organizations. They request the Commission take administrative notice of Section VII of the DSM Settlement Agreement so that the document is available for citation in their statement of position to be filed December 11, 2020. They state this ability to cite to provisions of Section VII of the DSM Settlement Agreement will allow them to explain how the proposed terms of the DSM Settlement Agreement relate to or modify their recommendations in this Proceeding.

5. The Environmental Organizations state that, in accordance with Rule 4 CCR 723-1-1501(c), they request the Commission take notice of Section VII of the DSM Settlement Agreement as a general fact as to the position of the settling parties in that case as to those terms, rather than considering the terms of the DSM Settlement Agreement as an undisputed fact. They indicate they request administrative notice of this document for the limited purpose of reflecting in the record of this Proceeding what Public Service and the settling parties in Proceeding No. 20A-0287EG have requested in that separate proceeding.

6. The Environmental Organizations clarify they do not request the Commission take administrative notice of the DSM Settlement Agreement as a fact that the DSM case has been resolved. They further clarify they do not ask the Commission to make any decision about the substance of the DSM Settlement Agreement, as any decision to approve, modify, or deny the settlement is a matter before the administrative law judge in that proceeding. They state that they make this request solely so that Section VII of the DSM Settlement Agreement is available to the Commission, so that it may better understand the relationship between the two proceedings as a part of its review of the recommendations in this Proceeding related to the Charging Optimization program.

7. The Environmental Organizations represent that the Motion is unopposed by other parties. They indicate ChargePoint supports the Motion. The Environmental Organizations request that remaining response time to the unopposed motion be waived.

C. Findings and Conclusions

8. Rule 4 CCR 723-1-1501(c) provides that the Commission may take administrative notice of “documents in its files” and requires that a party seeking administrative notice must “specify on the record every fact to be noticed” and “shall provide a complete copy of the document that contains any fact to be noticed as an exhibit in the proceeding.” In addition, the Commission has considerable latitude with respect to admitting evidence. *See, e.g.*, § 40-6-101(4), C.R.S. (Commission not “bound by the technical rules of evidence”).

9. In this very limited circumstance, we find good cause to grant the Motion and reopen the evidentiary record in order to take administrative notice of Section VII of the DSM Settlement Agreement as a general fact as to the position of the settling parties in that case as to those terms. Although we are reluctant to reopen the evidentiary record after the hearing has

concluded, in this instance, we find persuasive the contention that admitting this document will provide the Environmental Organizations the opportunity to cite to the settled positions in order to explain how the proposed terms of the DSM Settlement Agreement relate to or modify their recommendations in this Proceeding. We are persuaded that administrative efficiency and the potential to narrow and clarify parties' positions in this complicated and highly contested Proceeding provide good cause to grant the Motion. We find that no party will be prejudiced by granting the Motion, since it is unopposed.

10. Administrative notice will be taken of Section VII of the DSM Settlement Agreement as a general fact as to the position of the settling parties in that case as to those terms.

11. The Commission reopens the evidentiary record of this Proceeding solely for the purpose of admitting this document in its files by administrative notice.

II. ORDER

A. It Is Ordered That:

1. The unopposed motion filed on December 7, 2020, by Natural Resources Defense Council, Sierra Club, and Western Resource Advocates requesting the Commission reopen the evidentiary record in this Proceeding in order to take administrative notice of documents in its files, is granted. Remaining response time to the unopposed motion is waived.

2. Administrative notice is taken of Section VII of the Unopposed Comprehensive Settlement Agreement, and Motion to Approve Settlement Agreement, filed on December 3, 2020, by Public Service Company of Colorado in ongoing Commission Proceeding No. 20A-0287EG, consistent with the discussion above.

3. The evidentiary record of this Proceeding is reopened for the limited purpose of admitting into evidence this document in the Commission’s files. With the admission of this document, the evidentiary record is closed.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONER’S WEEKLY MEETING
December 9, 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 C. GAVAN

MEGAN GILMAN

Commissioners