

Decision No. R20-0395-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0049G

IN THE MATTER OF ADVICE LETTER NO. 961 FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO INCREASE RATES FOR ALL NATURAL GAS SALES AND TRANSPORTATION SERVICES TO BECOME EFFECTIVE MARCH 7, 2020.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
GRANTING VERIFIED MOTION
TO APPEAR *PRO HAC VICE***

Mailed Date: May 26, 2020

I. STATEMENT

1. This Interim Decision grants, consistent with the discussion below, the Verified Motion of John B. Coffman (Verified Motion) for Admission *Pro Hac Vice* in this Proceeding as counsel for Intervenor AARP (AARP).

A. Procedural History.

2. On February 5, 2020, Public Service Company of Colorado (Public Service) filed with the Colorado Public Utilities Commission (Commission), Advice Letter No. 961-Gas, accompanying tariff sheets, and supporting direct testimony and attachments. This filing is a combined Phase I and Phase II natural gas rate proceeding.

3. The effective date of the tariff sheets filed with Advice Letter No. 961-Gas have been suspended for a total of 250 days until November 12, 2020, pursuant to § 40-6-111(1)(b), C.R.S. (2019).¹

¹ See Decision No. C20-0112 (mailed on February 20, 2020) and Decision No. R20-0145-I (mailed on March 5, 2020).

4. The procedural history of this Proceeding is set forth in Decisions previously issued herein and is repeated here as necessary to put this Decision into context.

5. Decision No. R20-0208-I, (mailed on April 1, 2020) *inter alia* denied the Petition for Leave to Intervene filed by AARP on March 12, 2020, for failure to satisfy the minimal standards for permissive interventions required by Rule 1401(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.² Decision No. R20-0278-I (mailed on April 22, 2020) granted in part and denied in part AARP's Motion to Set Aside or Modify Interim Decision No. R20-0208-I, filed on April 6, 2020. AARP then became a party.

6. Decision No. R20-0145-I (mailed on March 5, 2020), Paragraph Nos. I.E.42 and 43 at page 14, *inter alia* contained the following advisements:

The parties ... are advised, and are on notice, that they must be familiar with, and abide by, the Rules of Practice and Procedure, 4 CCR 723-1. These Rules are available on-line at www.dora.colorado.gov/puc and in hard copy format from the Commission.

... The parties ... are advised, and are on notice, that filings must comply with this requirement and with the other requirements found in the Commission's rules pertaining to filings made with the Commission.

(Emphasis in the original, Footnote No. 24 omitted.)

7. Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1, requires that counsel filing a motion (with certain exceptions not applicable here) must make a reasonably good faith attempt to confer with counsel for the other parties in the proceeding and to report in the motion when it is unopposed. If no such conference has occurred, Rule 1400(a) requires the moving counsel to state the reason why.

² So that AARP could provide the Commission with its legal arguments on the issues about which it is concerned, the ALJ *sua sponte* granted AARP leave to participate in this Proceeding as *amicus curiae*, pursuant to Rule 1200(c) of the Rules of Practice and Procedure, 4 CCR 723-1.

B. Motion for *Pro Hac Vice* Admission.

8. An attorney who is not licensed to practice law in Colorado must be granted permission to appear *pro hac vice* in a Commission proceeding. Rule 1201(a) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, governs the admission of out-of-state attorneys. Rule 1201(a) requires compliance with Colorado Rule of Civil Procedure (Colo.R.Civ.P.) 205.4, which itself expressly incorporates Colo.R.Civ.P. 205.3.

9. As pertinent here, Colo.R.Civ.P. 205.3(2)(a) details what an out-of-state attorney must do to be permitted to appear *pro hac vice* and includes these requirements:

- a) File a verified motion with the administrative agency requesting permission to appear;
- b) Designate an associate attorney who is admitted and licensed to practice law in Colorado;
- c) File a copy of the verified motion with the Clerk of the Supreme Court Office of Attorney Registration at the same time the verified motion is filed with the administrative agency;
- d) Pay the required fee to the Clerk of the Supreme Court collected by the Office of Attorney Registration; and
- e) Obtain permission from the administrative agency for such appearance.

10. On April 10, 2020, John B. Coffman filed the Verified Motion to appear as counsel for AARP in this Proceeding. Mr. Coffman stated that he is a member in good standing of the Bar in the State of Missouri, and his affidavit attested to the requirements of Colo.R.Civ.P. 205.3(2)(a) summarized above. Mr. Dennis E. Valentine was designated as Mr. Coffman's associate attorney. The Verified Motion, however, failed to report any attempt to confer with counsel for the other parties in this Proceeding and, if no such conferral occurred, it failed to state the reason why.

11. Pursuant to Rule 1400(b), 4 CCR 723-1, opposing Parties had 14 days after service of the Verified Motion, or to and including April 24, 2020, to file written responses to the Verified Motions. No responses opposing the Verified Motion were filed.

12. The Commission received proof of Mr. Coffman's *Pro Hac Vice* registration from the Clerk of the Colorado Supreme Court and filed it in this Proceeding on May 21, 2020. Mr. Coffman has been assigned *Pro Hac Vice* registration No. 17PHV5158. The Proof of *Pro Hac Vice* Registration verified that Mr. Coffman has paid to the Colorado Supreme Court the \$300.00 filing fee, required by Colo.R.Civ.P. 205.3(1)(iii) and (iv), and that he has no adverse disciplinary history.³

13. The Administrative Law Judge (ALJ) has considered the Verified Motions, attached affidavits, and the Proof of the *Pro Hac Vice* Registration filed in this Proceeding on May 21, 2020, for Mr. Coffman.

14. Mr. Coffman has met the requirements of Colo.R.Civ.P. 205.4. Therefore, the ALJ will grant the Verified Motion filed by Mr. Coffman and will grant permission to him to appear *pro hac vice* as an attorney on behalf of AARP in this Proceeding.

15. Colo.R.Civ.P. 205.3(4) states that, "A separate petition, fee, and order granting permission are required for each action in which the attorney appears as *pro hac vice* counsel in Colorado." Therefore, the grant of permission in this Decision for Mr. Coffman to appear *pro hac vice* on behalf of AARP applies only to the instant Proceeding.

³ The Verified Motion states that a copy was filed with the Clerk of the Colorado Supreme Court at the Attorney Registration Office, 1560 Broadway, Suite 1810, Denver, Colorado 80203. (Verified Motion, ¶ 9 at page 3.) However, the correct address of the Attorney Registration Office is 1300 Broadway, Suite 510, Denver, Colorado 80202. The delay in the Commission receiving the Proof of *Pro Hac Vice* Registration was apparently caused by the error of mailing a copy of the Verified Motion to the wrong address.

16. Also pending in this Proceeding are Motions to Appear *Pro Hac Vice*, filed by the Federal Executive Agencies (FEA) on March 11, 2020, seeking the *pro hac vice* admission of three out-of-state attorneys – Major Scott L. Kirk, Captain Robert J. Friedman, and Thomas A. Jernigan. The FEA’s Motions to Appear *Pro Hac Vice* state that they were filed with the Clerk of the Colorado Supreme Court at the Attorney Registration Office, 1300 Broadway, Suite 510, Denver, Colorado 80203, with a request that the required registration fees be waived, which request was pending approval. (*Id.*, ¶ 20 at page 6.)⁴

17. The ALJ’s review of the official file in this Proceeding reveals that the Commission has not received from the Clerk of the Colorado Supreme Court the Proofs of *Pro Hac Vice* Registration for Major Kirk, Captain Friedman, or Mr. Jernigan. Without the Proofs of *Pro Hac Vice* Registration, the ALJ cannot rule on the Motions to Appear *Pro Hac Vice* for Major Kirk, Captain Friedman, or Mr. Jernigan.

II. ORDER

A. It Is Ordered That:

1. The Verified Motion of John B. Coffman for Admission *Pro Hac Vice*, filed on April 10, 2020, to appear as counsel on behalf of AARP is granted, consistent with the discussion in this Interim Decision.

⁴ FEA’s Motions to Appear *Pro Hac Vice* also contain no information about conferral with counsel for Public Service or other Parties, as required by Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1. Nevertheless, pursuant to Rule 1400(b), written responses to FEA’s Motions to Appear *Pro Hac Vice* were due by March 25, 2020, but no responses were filed.

2. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director