

Decision No. R21-0019-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 20AL-0432E

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IN THE MATTER OF ADVICE LETTER NO. 1835 – ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO ELIMINATE THE CURRENTLY EFFECTIVE GENERAL RATE SCHEDULE ADJUSTMENTS ("GRSA") AND GENERAL RATE SCHEDULE ADJUSTMENT - ENERGY ("GRSA-E"), AND PLACE INTO EFFECT REVISED BASE RATES AND OTHER AFFECTED CHARGES FOR ALL ELECTRIC RATE SCHEDULES IN THE COMPANY'S ELECTRIC TARIFF, INCLUDING UPDATED ELECTRIC AFFORDABILITY PROGRAM ("EAP"), LOAD METER, AND PRODUCTION METER CHARGES TO BECOME EFFECTIVE NOVEMBER 19, 2020.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
STEVEN H. DENMAN  
SUSPENDING NEW EFFECTIVE  
DATE OF AMENDED TARIFF SHEETS  
FILED WITH ADVICE LETTER  
NO. 1835-ELECTRIC AMENDED**

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Mailed Date: January 11, 2021

**I. STATEMENT**

**A. Procedural History.**

1. On October 19, 2020, Public Service Company of Colorado (Public Service) filed AL-1835 with tariff sheets. Through AL-1835, Public Service proposed to allocate its approved \$1,835,585,415 revenue requirement<sup>1</sup> across customer classes, based on a Class Cost of Service Study (CCOSS) using the 2019 Test Year approved by the Commission in Proceeding No.

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<sup>1</sup> The amount of \$1,828,985,415 was approved in Proceeding No. 20AL-0268E and \$6,600,000 for the Electric Affordability Program was allowed in Proceeding No. 20AL-0090E.

19AL-0268E. Public Service stated that this filing does not affect its annual revenue. This Proceeding is a Phase II Electric Rate Case.

2. Public Service proposed a November 19, 2020 tariff effective date. However, Public Service requested that the Commission suspend the tariffs and set them for hearing, with an effective date of July 27, 2021.

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

4. Pursuant to § 40-6-111(1)(b), C.R.S. (2019), the Commission has the discretion to set for hearing and to suspend the effective date of the tariff sheets by 120-days from the proposed effective date, and by separate order to suspend the effective date of the tariffs for an additional 130 days, for a maximum period of 250 days.

5. By Decision No. C20-0793 (issued on November 10, 2020) (Suspension Decision), and pursuant to § 40-6-111(1), C.R.S., the Commission set for hearing the tariffs filed with Advice Letter No. 1835-Electric and thereby suspended their effective date for 120 days from the proposed effective date, or until March 19, 2021. The Suspension Decision referred the matter to an Administrative Law Judge (ALJ). Subsequently, the undersigned ALJ was assigned to preside over this Proceeding.

6. By Decision No. R20-0887-I (issued on December 11, 2020), the ALJ concluded that a final Commission decision could not be issued in this Proceeding until after the expiration of the initial 120-day suspension period of March 19, 2021. Therefore, the ALJ further suspended the effective date of the tariff sheets filed with Advice Letter No. 1835-Electric to July 27, 2021. Decision No. R20-0887-I also scheduled a remote prehearing conference (by video platform) for December 22, 2020 at 10:00 a.m.

7. On December 18, 2020, Public Service filed a Notice of Filing a Consensus Procedural Schedule Pursuant to Decision No. R20-0887-I (Notice), proposing a negotiated Consensus Procedural Schedule to which all parties and potential parties had agreed. The Notice also proposed that, in order to accommodate the Consensus Procedural Schedule, Public Service would file an amended advice letter designed to allow the ALJ to extend the suspension deadline by 45-days.

8. The remote prehearing conference was held on December 22, 2020 as scheduled. Among other things, the ALJ discussed with counsel for the parties (and potential parties) the negotiated Consensus Procedural Schedule, which would extend the anticipated date for a final Commission decision beyond July 27, 2021. The ALJ impressed upon counsel for Public Service the need to file an amended Advice Letter No. 1835-Electric for the purpose of allowing the ALJ to extend the suspension period by an additional 45 days.

9. By Decision No. R20-0922-I (issued on December 29, 2020), the ALJ approved the proposed Consensus Procedural Schedule and agreed that Public Service's proposed approach for filing the amended advice letter to extend the suspension deadline was acceptable.

**B. Suspension of the Effective Date of the Filed Amended Tariffs.**

10. On January 8, 2021, Public Service filed Advice Letter No. 1835-Electric Amended and accompanying tariffs with an amended proposed effective date of January 3, 2021. No other changes from the original filed tariffs appear in the amended tariffs. Public Service states that the purpose of the amended advice letter and tariff filing is to allow the amended tariffs to be suspended for the maximum 250-days statutory suspension period, pursuant to § 40-6-111(1), C.R.S. (2019). Public Service proposes that, with the amended effective date of

January 3, 2021, the 250-day suspension period would end on September 9, 2021, allowing new rates and tariffs to become effective on September 10, 2021.<sup>2</sup>

11. When the Commission refers a proceeding to an ALJ, § 40-6-101(3), C.R.S. provides that the ALJ “has all the jurisdiction and powers conferred by law upon the commission and is subject to the same duties and obligations.” Moreover, pursuant to § 40-6-101(3), C.R.S., “Except as otherwise provided in this title, any order, decision, or requirement of ... an administrative law judge with respect to any matter assigned or referred to such officer under [§ 40-6-101(2), C.R.S.] has the same force and effect and may be made and evidenced in the same manner as if made or taken by the commission.” Title 40 provides no exceptions to the authority of ALJs relating to the suspension of tariffs filed by a jurisdictional public utility.

12. Pursuant to § 40-6-111(1)(b), C.R.S., the ALJ may, in his discretion, set the amended tariffs for hearing and thereby suspend their effective date for 120 days from the proposed new effective date, or until May 2, 2021. The ALJ also has the discretion to suspend the effective date of the tariff sheets by separate order for an additional 130 days; that is for a maximum period of 250 days or until September 9, 2021. If the ALJ further suspends the effective date of the amended tariffs for an additional 130 days, and if no new tariffs are established by the Commission

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<sup>2</sup> Advice Letter No. 1835-Electric Amended, at page 6. It is not legally possible for the amended tariffs to become effective retroactively on January 3, 2021, since they were not filed until January 8, 2021. Pursuant to § 40-6-111(1)(a), C.R.S., “Whenever there is filed with the commission any tariff ... stating any new or changed ... rate, ... charge, classification, ... rule, or regulation, the commission has power” to set the tariff for hearing and suspend their effective date for a maximum of 250 days under § 40-6-111(1)(b), C.R.S. Hence, filing tariffs is a condition precedent to the tariffs becoming effective or being set for hearing and suspended. To allow the amended tariff to become effective on January 3, 2021 would constitute unlawful retroactive ratemaking. *See Silverado Communications Corp. v. Public Utilities Comm’n.*, 893 P.2d 1316, 1321 (Colo. 1995) and cases cited there. Assigning the January 3, 2021 effective date to the amended tariffs is only a procedural device to allow the Commission or ALJ to extend the suspension period, pursuant to § 40-6-111(1), C.R.S., to obtain additional time to litigate and to decide a rate case.

before the end of the 250-day suspension period, the amended tariffs filed by Public Service may become effective prospectively.

13. Pursuant to § 40-6-111(1), C.R.S., the ALJ finds that the rates in the amended tariffs filed with Advice Letter No. 1835-Electric Amended may be improper. Therefore, the ALJ will set the amended tariffs for hearing and will thereby suspend the effective date of the amended tariffs for 120 days from the proposed new effective date, or until May 2, 2021.

14. The ALJ will issue a separate Interim Decision further suspending the effective date of the amended tariffs filed with Advice Letter No. 1835-Electric Amended for an additional 130 days, that is for a maximum period of 250 days or until September 9, 2021.

## **II. ORDER**

### **A. It Is Ordered That:**

1. Pursuant to § 40-6-111(1), C.R.S. (2019), the amended tariff sheets filed by Public Service Company of Colorado (Public Service) with Advice Letter No. 1835-Electric Amended on January 8, 2021, are set for hearing as follows:

DATE: May 3 through 7 and 10 through 14, 2021

TIME: 9:00 a.m.<sup>3</sup>

WEBCAST: Commission Hearing Room A

METHOD: By video conference using GoToMeetings at the link to be provided to counsel and the parties by email prior to the hearing

2. The parties, counsel, witnesses, and members of the public shall not attend the remote hearing in-person at the Commission's hearing room, unless directed to do so by a future decision.

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<sup>3</sup> Hearings on Wednesday May 5 and Wednesday May 12, 2021 shall begin at 10:30 a.m. in order to accommodate the Commission's Weekly Meetings scheduled for those dates.

3. Pursuant to § 40-6-111(1), C.R.S. (2019), the effective date of the tariff sheets filed by Public Service with Advice Letter No. 1835-Electric Amended on January 8, 2021, are suspended for 120 days; that is, to and including May 2, 2021.

4. The procedural schedule and procedural rulings adopted in Decision No. R20-0922-I (issued on December 29, 2020) shall continue to apply to this proceeding.

5. This 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