

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23D-0591E

IN THE MATTER OF THE COLORADO COMMUNICATION AND UTILITIES ALLIANCE, THE TOWN OF MORRISON, AND THE CITIES OF ARVADA, AURORA, CENTENNIAL, NORTHGLENN, AND WHEAT RIDGE'S PETITION FOR A DECLARATORY ORDER REGARDING PUBLIC SERVICE COMPANY OF COLORADO'S CUSTOMER OWNED LIGHTING TARIFF AND PAYMENT RESPONSIBILITY FOR STATE AND INTERSTATE HIGHWAY STREETLIGHTING.

**INTERIM DECISION SETTING PREHEARING
CONFERENCE**

Issued Date: July 19, 2024

I. STATMENT

A. Procedural Background

1. On December 4, 2023, the Colorado Communication and Utilities Alliance, the Town of Morrison, and the Cities of Arvada, Aurora, Centennial, Northglenn, and Wheat Ridge (collectively the “Local Governments”) filed a Petition for Declaratory Order (“Petition”) initiating this Proceeding. In the Petition, the Local Governments request that the Colorado Public Utilities Commission (“Commission” or “PUC”) resolve uncertainty regarding which entities are responsible for the maintenance and illumination of streetlights within their municipal boundaries. The Local Governments argue that the State Highway Act and the terms of Public Service Company of Colorado’s (“Public Service”) Customer Owned Lighting Tariff (“COL Tariff”) require that payment responsibility for streetlights on state and interstate highways remain with

the Colorado Department of Transportation (“CDOT”) unless certain conditions of transfer under the Public Service COL Tariff are met.

2. On December 19, 2023, Public Service and CDOT filed a Joint Motion to Stay the Commission’s Determination of Whether to Accept or Deny the Petition (“Joint Motion”). Public Service and CDOT allege factual inaccuracies in the Local Governments’ Petition and claim that the controversy presented would involve statutory interpretation applicable to many Colorado electric utilities, as well as analysis of franchise agreements and other rate schedules or tariffs in addition to the COL Tariff. Public Service and CDOT request that they be allowed until January 24, 2024, to prepare their response on the threshold issue of acceptance or rejection of the Local Governments’ Petition. Public Service and CDOT also indicate that it would be appropriate to allow the Local Governments to submit reply briefing.

3. By Decision No. C23-0861-I, issued December 22, 2024, the Commission construed the Joint Motion as a public comment. Decision No. C23-0861-I set a deadline of January 3, 2024, by which to file any responses to the Petition.

4. On January 3, 2024, CDOT filed a response to the Petition arguing that the Commission lacks jurisdiction to consider the Petition and requesting that the Petition be rejected in its entirety and dismissed.

5. Public Service also filed a response on January 3, 2024. While it acknowledged CDOT’s jurisdictional concerns, Public Service advocated that the Commission either reject the Petition or limit the scope of the issues to be considered.

6. On February 7, 2024, the Commission issued Decision No. C24-0079-I, accepting the Petition and denying CDOT’s request that the Commission reject and dismiss the Petition. The Commission determined that “there is a controversy concerning payment responsibility for

certain state and interstate streetlights under Public Service's street lighting tariffs."¹ The Commission noted that the Local Governments, in their replies in support of the Petition, had narrowed and clarified the parameters of the controversy. In particular, the Commission explained that the Local Governments had characterized the dispute in the following terms:

The Local Governments state the Petition involves only streetlights within Public Service's service territory and interpretation of Public Service's streetlighting tariffs. They state that, contrary to Public Service's assertions, they are not requesting the Commission issue an order binding on all Colorado electric utilities, analyze local franchises, or perform a streetlight by street light analysis of the type of street or state highway where a streetlight resides. The Local Governments state they are not requesting the Commission regulate CDOT, and that CDOT's involvement is limited to the fact that CDOT's inconsistent decisions to stop paying for some state and interstate highway streetlighting has driven Public Service to demand payment from local governments. They emphasize that, while the origin of the dispute is rooted in CDOT's interpretation of the Highway Law and State Highway Act, the foundational issue in the Petition involves Public Service's actions under its tariffs.²

7. As the Commissions stated, it may "entertain a petition for declaratory order to terminate a controversy or remove an uncertainty regarding any tariff, statute, or Commission rule, regulation, or order."³ The Commission found that "evaluating the questions presented in the Petition, as clarified by the Local Governments' Reply, may remove uncertainty regarding Public Service's ability to transfer payment for state and interstate highway streetlights to local government responsibility under the terms and conditions of the Company's street lighting tariffs."⁴ Because the controversy could settle the uncertainty raised by the Local Governments' Petition, the Commission determined it had jurisdiction to resolve the dispute.

¹ Decision No. C24-0079-I, p. 11, ¶ 24, issued Feb. 7. 2024.

² *Id.* at p. 9, ¶ 17.

³ *Id.* at p. 10, ¶ 23.

⁴ *Id.* at p. 11, ¶ 24.

8. Decision No. C24-0079-I also acknowledged Public Service's Intervention as of Right, and granted CDOT's motion to permissively intervene in this Proceeding.

9. Since the issuance of Decision No. C24-0079-I, no other entities have intervened in this Proceeding. The parties to this Proceeding are therefore the Local Governments, Public Service, and CDOT.

II. PREHEARING CONFERENCE

10. In order to move this Proceeding forward, the ALJ will schedule and hold a fully remote prehearing conference per Rule 1409(a), 4 *Code of Colorado Regulations* ("CCR") 723-1 on **Monday, August 5, 2024, at 11:00 a.m.**

11. Participants will appear at the prehearing conference from remote locations by video conference and may not appear in person for the prehearing conference. The remote prehearing conference will be held using the web-hosted service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

12. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

13. At the prehearing conference, the ALJ anticipates discussing the parties' preferences for a procedural schedule, evidentiary hearing(s), oral argument(s), and/or a briefing schedule.

14. All parties are on notice that failure to appear at the prehearing conference may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application. The ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

III. ORDER

A. It Is Ordered That:

1. A fully-remote prehearing conference in this Proceeding is scheduled as follows:

DATE: Monday, August 5, 2024

TIME: 11:00 a.m.

PLACE: Join by video conference using Zoom

METHOD: By videoconference using Zoom at the link to be provided to counsel and the parties via email prior to the hearing.

All parties and witness must participate remotely by joining a video conference using Zoom at the link provided to the established parties in an e-mail prior to the scheduled hearing, as addressed above.⁵

2. **Video-Conference Participation.** Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

3. **Instructions for Remote Hearings Via Zoom:** Detailed instructions governing participation in and procedures for remote hearings conducted via Zoom are set out in Attachment A to this order, which is incorporated into and made part of this order.

⁵ Instructions for using the Zoom videoconferencing platform are provided in Attachment A to this Decision.

4. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge