

Decision No. R25-0191-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0560E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE DENVER METRO TRANSMISSION NETWORK IMPROVEMENT PROJECT, A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE LEETSDALE-ELATI TRANSMISSION PROJECT, AND ASSOCIATED FINDINGS OF NOISE AND MAGNETIC FIELD REASONABLENESS.

**INTERIM DECISION DENYING MOTION FOR LEAVE TO
REPLY AND DENYING WITHOUT PREJUDICE MOTION
FOR WAIVER OF RULES 3206(E)(IV)-(VI) AND
3206(F)(IV)-(V) REGARDING NOISE AND MAGNETIC
FIELD LEVELS**

Issued Date: March 18, 2025

I. STATEMENT

A. Relevant Procedural Background

1. On December 20, 2024, Public Service (“Public Service” or “the Company”) filed its Application (“Application”) seeking issuance of Certificates of Public Convenience and Necessity for the Denver Metro Transmission Network Improvement Project and the Leetsdale-Elati 230 kV Underground Transmission Upgrade Project. Additionally, the Company requests the Commission to make associated findings of noise and magnetic field reasonableness, among other things. In support of its Application, Public Service included pre-filed Direct Testimony and accompanying attachments of six witnesses.

2. Concurrent with its Application, Public Service filed an Omnibus Motion for Extraordinary Protection of Highly Confidential Information (“Motion for Extraordinary

Protection”) and for Waiver of Rules 3206(e)(IV)-(VI) and 3206(f)(IV)-(V) Regarding Noise and Magnetic Field Levels (“Motion for Waiver”).

3. The Commission issued a Notice of Application Filed on December 23, 2024. The Notice set a 30-day intervention period that ran through January 22, 2025.

4. On January 6, 2025, the Colorado Office of the Utility Consumer Advocate (“UCA”) filed a notice of intervention of right and request for hearing.

5. On January 27, 2025, Trial Staff of the Commission (“Staff”) filed a notice of intervention of right and request for hearing.

6. On January 31, 2025, the Commission issued Decision No. C25-0074 that referred the proceeding to an Administrative Law Judge (“ALJ”). The proceeding was subsequently assigned to the undersigned ALJ.

7. On February 10, 2025, the ALJ issued Decision No. R25-0087-I that, among other things, granted the Motion for Extraordinary Protection and required the intervening parties to file a response to Public Service’s Motion for Waiver.

8. On February 19, 2025, Staff, UCA, and Tri-State filed responses to Public Service’s Motion for Waiver. Staff and UCA stated that they oppose, and Tri-State reported that it takes no position with respect to, Public Service’s Motion for Waiver.

9. On February 27, 2025, Public Service filed a Motion for Leave to Reply (“Motion for Leave”) and proffered a Reply Brief in Support of the Motion for Waiver (“Public Service’s Reply”). Public Service requested that response time to the Motion for Leave be shortened to seven days.

10. On February 28, 2025, the ALJ issued Decision No. R25-0149-I that, among other things, granted Public Service’s unopposed request to shorten response time to the Motion for Leave to seven days.

11. On March 6, 2025, Staff filed a Response to Public Service’s Motion for Leave to Reply.

B. Motions

1. Motion for Waiver

12. Public Service requests waiver of Rules 3206(e)(IV)-(VI) and 3206(f)(IV)-(V) that require a utility to present an alternative project and the associated costs to reduce the magnetic field and sound levels of a transmission project if those levels are projected to be above allowable limits. Public Service asserts that it has conducted a “preliminary evaluation”¹ and determined that any alternatives are “physically impossible, impractical, and/or prohibitively expensive.”² This is because the proposed projects are replacing existing equipment or introducing new equipment in locations that “were constructed prior to the promulgation of the Commission’s noise and magnetic field rules,”³ “are bordered by roads and other development,”⁴ and “surrounded on all sides by urban development that make additional land acquisition difficult, if not impossible.”⁵ In one case, Public Service has not identified the location for a needed substation, so “magnetic field modeling at this stage of development is speculative and there are many unknowns that will impact the as-built magnetic field levels for these circuits.”⁶ Public Service thus requests a waiver of the foregoing rules to “preserve Company, Commission, and stakeholder resources that would

¹ Reply at p. 6 (¶ 15). *See also* Motion for Waiver at 21 (¶ 38).

² Motion for Waiver at p. 9, 10, 11, 12 (¶¶ 16, 17, 19, 20).

³ *Id.* at p. 12 (¶ 22).

⁴ *Id.* at p. 22 (¶ 40).

⁵ *Id.* at p. 23 (¶¶ 42)

⁶ *Id.* at p. 17 (¶ 30).

otherwise be expended in developing and considering alternatives” that are not viable.⁷ While Public Service requested in the Motion “an order granting waiver of Rules 3206(e)(IV)-(VI) and 3206(f)(IV)-(V),” in its proffered reply brief it asks for its Motion to be held “in abeyance until the conclusion of the proceeding” “and agrees with Staff that the merits of the proposed projects and potential alternatives should be evaluated over the course of the proceeding and not solely on the Company’s Motion.”⁸

13. Staff counters that Public Service’s Motion for Waiver is “perplexing” because it is clear that Public Service evaluated alternatives to mitigate noise and magnetic field levels but “determine[d] them to be ‘practically or technically infeasible.’”⁹ As a result, “it is unclear why the Company needs a waiver to avoid presenting the full details of those alternatives for further consideration by the Commission or why doing so is a waste of resources.”¹⁰ Staff asserts that, based on the foregoing, Public Service “appears to be really seeking a ruling on the merits of the proposed projects and alternatives or a waiver of Rules 3206(e)(III), 3206(e)(VII), 3206(f)(II), and 3206(f)(VI), which require that the noise and magnetic field levels for proposed transmission projects as well as potential alternatives above the deemed reasonable threshold be subject to further Commission review and consideration.”¹¹ Staff requests that the Motion for Waiver be denied.¹²

2. Motion for Leave

14. Public Service argues that: (a) UCA’s Response to the Motion for Waiver contains material misrepresentations of fact and introduces new facts and information that Public Service

⁷ Motion for Waiver at p. 10, 12 (¶¶ 17, 20).

⁸ Public Service’s Reply at p. 8 (¶¶ 16, 17).

⁹ Staff’s Response at p. 3 (¶ 8).

¹⁰ *Id.* at pp. 3-4 (¶ 8).

¹¹ *Id.* at p. 4 (¶ 9).

¹² *See also* UCA’s Response.

could not, with reasonable diligence, have discovered at the time it filed the Motion for Waiver; and (b) Staff's Response factually misrepresents the Company's alternative analyses and relief sought in the Motion for Waivers. As to the former, Public Service states that the following claims by UCA are material misrepresentations of fact: (a) "installing a larger conductor on Line 5709 instead of the proposed ACCC 1581 kcmil 'Bittern' would lower the magnetic field;"¹³ and (b) a "higher conductor capacity should also reduce the noise level."¹⁴ According to Public Service, a larger conductor on Line 5709 would, in fact, increase the magnetic field, and "conductor capacity does not impact electric noise levels, although a larger conductor diameter could potentially result in lower noise values."¹⁵ Public Service does not state whether higher conductor capacity necessarily entails a larger conductor capacity.

15. Similarly, Public Service complains that Staff's statement in its Response that Public Service "*fully studied* alternative options" for noise and magnetic field mitigation is a factual misrepresentation. According to Public Service, it merely conducted a "*preliminary evaluation*" of alternatives and associated costs.¹⁶ Public Service concludes that, pursuant to Commission Rule 1400(e), it should be allowed to file a reply brief and proffered such a brief with its Motion for Leave.

16. Staff counters that its response does not contain any material misrepresentations of fact. Instead, its response contains counterargument and opinion regarding Public Service's arguments supporting the Motion for Waiver.¹⁷ Staff takes no position with respect to Public Service's motion to reply to UCA's Response.¹⁸ UCA did not file a response to Public Service's

¹³ Motion for Leave at p. 4 (¶ 10).

¹⁴ *Id.* at p. 5 (¶ 13).

¹⁵ *Id.*

¹⁶ *Id.* at p. 6 (¶ 15) (emphasis added).

¹⁷ Staff's Response to Motion for Waiver at pp. 2-3.

¹⁸ *Id.* at p. 2 n.3.

Motion for Leave. According to the Motion for Leave, UCA takes no position with respect to the Motion for Leave.

C. Analysis

1. Motion for Leave

17. Under Commission Rule 1400(e), “[a] movant may not file a reply to a response unless the Commission orders otherwise.” To obtain permission, a motion for leave to reply must demonstrate: (a) a material misrepresentation of a fact; (b) accident or surprise, which ordinary prudence could not have guarded against; (c) newly discovered facts or issues, material for the moving party which that party could not, with reasonable diligence, have discovered at the time the motion was filed; or (d) an incorrect statement or error of law.¹⁹ The movant bears the burden of proving one or more of these factors by a preponderance of the evidence.²⁰

18. Here, the ALJ concludes that Public Service has not carried its burden of establishing that a reply brief is warranted. The alleged material misrepresentations of fact and new facts do not rise to the level necessary to justify a reply brief. Accordingly, the Motion for Leave will be denied.

2. Motion for Waiver

19. While Public Service, Staff, and UCA disagree about the mechanism by which it should be accomplished, they agree that the Motion for Waiver should not be decided at this time. Specifically, Staff requests that the Motion for Waiver be denied,²¹ UCA states that the Motion for Waiver is “inappropriate at this time,”²² and Public Service asks that the Motion for Waive be held

¹⁹ 4 *Colorado Code Regulations* (CCR) 723-1.

²⁰ Rule 1500, 4 CCR 723-1.

²¹ Staff’s Response to Motion for Waiver at p. 5 (¶ 11).

²² UCA’s response to Motion for Waiver at 6.

“in abeyance until the conclusion of this proceeding.”²³ Based on the foregoing, the ALJ will deny the Motion for Waiver without prejudice. Public Service can reassert the Motion for Waiver later in the proceeding if it so chooses.

II. ORDER

A. It Is Ordered That:

1. For the reasons stated above, the Motion for Waiver of Rules 3206(e)(IV)-(VI) and 3206(f)(IV)-(V) Regarding Noise and Magnetic Field Levels contained within the Omnibus Motion filed by Public Service Company of Colorado (“Public Service”) on December 20, 2024 is denied without prejudice.
2. The Motion for Leave to Reply filed by Public Service on February 27, 2025 is denied.
3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director

²³ Reply at p.8 (¶ 18), 9 (Request for Relief).