

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24AL-0377E

IN THE MATTER OF ADVICE NO. 1960 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO MODIFY TIME-OF-USE ("TOU") TARIFFS FOR ELECTRIC SERVICE, INCLUDING TOU PERIODS AND ASSOCIATED TOU RATES AND CHARGES, TO BECOME EFFECTIVE OCTOBER 4, 2024.

**INTERIM COMMISSION DECISION
GRANTING REQUESTS FOR INTERVENTION,
GRANTING MOTION FOR PRO HAC VICE
APPEARANCE, GRANTING MOTION FOR
EXTRAORDINARY PROTECTION, SCHEDULING AN
EVIDENTIARY HEARING, REFERRING DISCOVERY
DISPUTES AND MOTIONS FOR EXTRAORDINARY
PROTECTION TO AN ALJ, AND ADDRESSING THE
DEVELOPMENT OF A PROCEDURAL SCHEDULE**

Issued Date: October 23, 2024

Adopted Date: October 16, 2024

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I. BY THE COMMISSION**A. Statement**

1. On September 3, 2024, Public Service Company of Colorado (“Public Service” or the “Company”) filed Advice Letter No. 1960-Electric to modify its time-of-use (“TOU”) rate schedules as detailed in Decision No. C24-0662.

2. By Decision No. C24-0662, the Commission set the TOU tariff sheets filed with the advice letter for hearing and suspended their effective date by 120 days pursuant to § 40-6-111(1), C.R.S. The decision also established October 9, 2024, as the deadline for the notice and intervention period and responses to the Motion for Extraordinary Protection (“MEP”) filed by the Company concurrently with its advice letter.

3. This Decision grants the motions for intervention in this matter, grants Public Service’s MEP, grants the motion for *pro hac vice* appearance, refers future discovery disputes and motions for protective orders to an administrative law judge (“ALJ”), and establishes certain initial procedures.

B. Interventions and Parties to the Proceeding

4. Trial Staff of the Colorado Public Utilities Commission (“Staff”) and the Colorado Office of the Utility Consumer Advocates (“UCA”) filed timely notices of intervention by right. UCA represents the public interest and specific interests of residential, small business, and agricultural customers under § 40-6.5-104, C.R.S. Staff and UCA detail several issues they plan to address, and both Staff and UCA request a hearing.

5. Pursuant to Rule 4 *Code of Colorado Regulations* (“CCR”) 723-1-1401(b) of the Commission’s Rules of Practice and Procedure, no decision is required in response to

appropriately filed notices of intervention by right. We acknowledge the notices of intervention of right, and that Staff and UCA are parties to this Proceeding.

6. The following parties filed timely requests for permissive intervention: the Kroger Co. (“Kroger”), the City of Boulder (“Boulder”), Colorado Solar and Storage Association and Solar Energy Industries Association (“COSSA/SEIA”), Energy Outreach Colorado (“EOC”), Western Resource Advocates (“WRA”), and the Colorado Renewable Energy Society (“CRES”). We highlight some of the varied interests represented by these organizations below.

7. Kroger is a corporation engaged in the business of selling groceries at retail throughout the United States. One of the largest retail food companies in the United States, Kroger operates approximately 110 grocery stores in the state of Colorado through its King Soopers and City Market divisions. Kroger is a retail electric customer of Public Service. It has approximately 90 grocery stores and other facilities that purchase their electric supply from Public Service. Kroger states that, as an active participant in Public Service’s Phase II Rate Case, it has an interest in how the time-differentiated charges are ultimately implemented.

8. EOC’s mission is to ensure that income-qualified Colorado households can meet their home energy needs. Pursuant to C.R.S. § 40-8.5-104 and § 40-8.7-104, EOC collects and disburses low-income energy assistance funds. It points out that it has a vested interest in assuring that the interests of income-qualified customers of Colorado utilities are duly recognized in proceedings before the Commission, and in ensuring that rates are just and reasonable such that the organization is not burdened by having to increase assistance payments and other crisis mitigation disbursements. EOC specifically states it must ensure that the Company’s proposal does not result in rate increases and uncertainty in rates that unjustly, unreasonably, and/or disproportionately burden income-qualified customers and EOC’s services.

9. COSSA is a nonprofit trade association membership is comprised of approximately 280 solar- and storage-related businesses and advocates representing thousands of Colorado employees, including solar electric, solar thermal, and energy storage contractors, many of whom operate in Public Service's franchised service territory. SEIA is the national trade association for the U.S. solar energy industry. These organizations jointly state they have a pecuniary interest in ensuring that any time-of-use rate that applies to current or future customers served by their members is appropriately designed — including the determination of on-peak, off-peak, and shoulder periods — not to harm customers with distributed solar or to disincentivize the adoption of distributed solar.

10. WRA is a non-profit conservation organization dedicated to protecting the land, air, and water of the West in order to ensure that communities exist in balance with nature, with a vision of a prosperous economy that is not dependent on fossil-fueled electricity generation. It states that this proceeding will impact the tangible interests WRA represents, specifically environmental protection through reduction of carbon dioxide emissions in the state of Colorado. WRA contends that it is unique, and therefore no other party will adequately represent its interests in this proceeding.

11. Boulder is a large customer of Public Service that operates facilities which take service under Public Service rate schedules Small Commercial, Secondary General, Primary General, Street Lights, and Non-Metered Street Lights. Boulder seeks to intervene with respect to, several issues raised in the Advice Letter including proposed modifications of various rate schedules, elimination of shoulder periods, initiation of time-differentiated generation, and modification of the ECA on-peak periods. Boulder indicates it has pecuniary and tangible interests

that may be substantially affected by the outcome of the Proceeding and that are not adequately represented by any other party.

12. CRES is a nonprofit promoting energy efficiency and renewable energy, including advocacy for a carbon-neutral Colorado powered by 100 percent renewable energy. CRES states its interest in representing its members regarding the promotion of energy efficiency, demand side management, beneficial electrification, and the full breadth of renewable energy development in Colorado's communities. Specifically, CRS states it is well-positioned to represent consumers, businesses, and communities interested in clean heating issues presented in this proceeding. CRES also notes its interests are not aligned with UCA's broad public interest mandate, and are focused on promoting energy efficiency and renewable energy of all types and promoting public health and protecting human life in its effort to achieve a carbon-neutral Colorado.

13. Rule 4 CCR 723-1-1401(c) of the Commission's Rules of Practice and Procedure sets forth the standard for permissive intervention and states, in relevant part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented.

14. Further, Rule 4 CCR 723-1-1401(c) requires that a movant who is a "residential consumer, agricultural consumer, or small business consumer" must discuss in the motion whether the distinct interest of the consumer is either not adequately represented by the UCA or inconsistent with other classes of consumers represented by the UCA. As set forth in §§ 40-6.5-104(1) and (2),

C.R.S., the UCA has a statutory mandate to represent the interest of the Company's residential small business, and agricultural customers in Colorado.

15. We find that each entity seeking permissive intervention has sufficiently demonstrated that this Proceeding may substantially affect its pecuniary or tangible interests, as is required by Rule 1401(c). Each also has demonstrated that its interests would not otherwise be adequately represented. Therefore, we grant the requests for permissive intervention.

C. Request for Pro Hac Vice Appearance

16. 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 ("CRCP") 205.4, which itself expressly incorporates CRCP 205.3. As pertinent here, CRCP 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 associated 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.

17. Kurt J. Boehm, on behalf of Kroger, moved for *pro hac vice* admission. After reviewing the verified motion, and certificate of good standing received by the Commission

from Office of Attorney Registration, we find Mr. Boehm has met the above requirements and therefore grant the motion.

D. Motion for Extraordinary Protection

18. On September 3, 2024, concurrent with its Advice Letter, Public Service filed an MEP in which it seeks extraordinary protection pursuant to Rule 1101(b) for two general categories of highly confidential information – Highly Confidential Customer Information and Highly Confidential Generation Information. Parties to this Proceeding had not been established at the time the motion was filed. By Decision No. C24-0662, the Commission set the response deadline for the Motion as October 9th – the same date the intervention deadline ran – and no responses were filed opposing the Company’s MEP.

19. Regarding the Highly Confidential Customer Information, the Company explains it seeks to restrict access to individual or aggregated customer information that does not comport with Commission Rule 3033(b), the “15/15 Rule.” The Company requests that access to this information be limited to the Commissioners, the ALJ assigned to this matter, the Commission’s advisory staff and advisory attorneys, Trial Staff and its attorneys, and the UCA and its attorneys.

20. Regarding the Highly Confidential Generation Information, the Company asserts that because the proceeding depends on an analysis of electric system hourly marginal costs, and because the Company anticipates the potential for discovery requests on similarly granular data relating to generation performance and attributes, the Company also requests extraordinary protection of this information. The Company asserts disclosure of these categories of Highly Confidential Information could cause irreparable harm to the Company’s trading operations, the Company’s ability to solicit cost-effective resources, and ultimately, the Company’s customers. The Company also asserts that it has contractually committed to keep certain terms and

information associated with its power purchase agreements (“PPAs”) confidential, and the Company claims it is bound to maintain these contractual commitments absent an order from the Commission to the contrary.

21. The Company requests that hourly system marginal cost, other hourly market price data, unit level heat rate curves, and unit detailed maintenance schedules be limited to a reasonable number of attorneys and subject matters experts representing each party to this proceeding. With respect to the Highly Confidential Generation Data that is protected by a confidentiality clause of a PPA, the Company requests that such highly confidential information be limited, again, to the Commissioners, the ALJ assigned to this matter, the Commission’s advisory staff and advisory attorneys, Trial Staff and its attorneys, and the UCA and its attorneys. The Company further notes that the Commission has granted similar requests for extraordinary protection in previous proceedings.

22. When presented with a motion for extraordinary protection of claimed highly confidential information, the Commission determines whether the information is, in fact, highly confidential, the level of extraordinary protection that may be warranted, and to whom access should be granted.

23. The operative language in Rule 1101(b)(IV) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1, which concerns motions requesting highly confidential protection, requires that the motion:

shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission’s rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information ...

24. We find persuasive the reasoning and arguments in the Company's MEP. The motion states good cause to grant the relief sought under Rule 1101. The Commission further finds the requested protections are appropriate, are reasonable, and are consistent with the Commission's Rules and past practice.

25. Based on the foregoing, we grant the Motion for Protective Order and approve the non-disclosure agreements. Additionally, for procedural efficiencies we refer discovery disputes and motions for extraordinary protection regarding discovery matters to an ALJ.

E. Procedural Schedule

26. We direct Public Service to confer with the intervening parties to develop and propose a consensus procedural schedule including discovery procedures. Public Service shall file either a conferral report describing the efforts to reach consensus on a proposed procedural schedule or a motion to approve a proposed procedural schedule no later than October 28, 2024. Parties should consider and include at least one public comment hearing in the procedural schedule.

27. To further the Commission's objective to have new TOU rates in effect before the Summer of 2025, through this decision we schedule an *en banc* evidentiary hearing for January 13-15, 2025. The Commission will decide whether this hearing will be in-person or remote in a forthcoming decision.

II. ORDER

A. It Is Ordered That:

1. The Motion to Intervene filed on October 4, 2024, by Energy Outreach Colorado is granted.

2. The Motion to Intervene filed on October 4, 2024, by the Kroger Company is granted. The Motion for *Pro Hac Vice* Admission of Kurt J. Boehm filed by The Kroger Company on October 10, 2024, is granted

3. The Joint Motion to Intervene filed on October 8, 2024, by Colorado Solar and Storage Association (“COSSA”) and Solar Energy Industries Association (“SEIA”) is granted.

4. The Motion to Intervene filed on October 8, 2024, by the City of Boulder is granted.

5. The Motion to Intervene filed on October 9, 2024, by the Colorado Renewable Energy Society is granted.

6. The Motion to Intervene filed on October 9, 2024, by Western Resource Advocates is granted

7. The parties to this Proceeding are Public Service, Trial Staff of the Colorado Public Utilities Commission, the Colorado Office of the Utility Consumer Advocate, Energy Outreach Colorado, the Kroger Company, COSSA/SEIA, the City of Boulder, Western Resource Advocates, and the Colorado Renewable Energy Society.

8. The Motion for Extraordinary Protection filed on September 3, 2024, by Public Service, is granted.

9. Discovery disputes and motions for extraordinary protection regarding discovery matters are referred to an Administrative Law Judge.

10. An *en banc* evidentiary hearing is scheduled for January 13-15, 2024.

11. Public Service is directed to confer with the parties to develop a proposed procedural schedule, consistent with the discussion above. Public Service shall file a report addressing its conferral with the parties regarding a procedural schedule or a motion to approve a consensus procedural schedule no later than October 28, 2024.

12. This Decision is effective immediately upon its Issued Date.

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners