

<p>DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202</p>	
<p>WILDEARTH GUARDIANS, Plaintiff,</p> <p>v.</p> <p>COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT; COLORADO AIR QUALITY CONTROL COMMISSION, COLORADO AIR POLLUTION CONTROL DIVISION, Defendants,</p> <p>and</p> <p>ENVIRONMENTAL DEFENSE FUND, Plaintiff,</p> <p>v.</p> <p>COLORADO AIR QUALITY CONTROL COMMISSION AND COLORADO AIR POLLUTION CONTROL DIVISION, Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Movant Intervenor Public Service Company of Colorado:</i> Franz Hardy, Esq., Atty Reg. #32286 Stephanie S. Brizel, Esq., Atty Reg. #50827 GORDON REES SCULLY MANSUKHANI, LLP 555 Seventeenth Street, Suite 3400 Denver, Colorado 80202 Telephone: (303) 534-5160 Telecopier: (303) 534-5161 E-mail: fhardy@grsm.com; sbrizel@grsm.com</p> <p>Matthew S. Larson, Esq., Atty Reg. #41305 WILKINSON BARKER KNAUER, LLP 2138 West Thirty-Second Avenue, Suite 300 Denver, Colorado 80211 Telephone: (303) 626-2328 Telecopier: (303) 626-2351 Email: mlarson@wbklaw.com</p>	<p style="text-align: center;">Case No. 2020CV32320</p> <p style="text-align: center;">Consolidated with Case No. 2020CV32688</p> <p style="text-align: center;">Div.: 414</p>
<p>MOTION FOR INTERVENTION</p>	

Movant Intervenor Public Service Company of Colorado (“PSCo”), through its attorneys, Gordon Rees Scully Mansukhani, LLP and Wilkinson Barker Knauer, LLP, submits this Motion for Intervention as a Matter of Right, or, in the Alternative, Permissive Intervention pursuant to Colorado Rule of Civil Procedure 24(a) and (b).

I. CERTIFICATION OF CONFERRAL

Counsel for PSCo has conferred with counsel for WildEarth Guardians and Environmental Defense Fund (collectively, “Plaintiffs”) and the Colorado Air Quality Control Commission (“AQCC”) and Colorado Air Pollution Control Division (“Division”) (collectively “Defendants”) pursuant to C.R.C.P. 121 § 1-15(8). Plaintiff Environmental Defense Fund takes no position on the Motion for Intervention and states it will be in a better position to determine its view after it is filed. Plaintiff WildEarth Guardians has not provided a position after an initial telephone call with PSCo’s counsel. Defendants do not oppose the relief requested herein.

II. INTRODUCTION

This is a declaratory judgment action addressing environmental legislation where Plaintiffs seek Defendants’ compliance with the Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-101 *et seq.* (“the Act”). More specifically, Plaintiffs allege that Defendants violated the Act by failing to publish a notice of proposed rulemaking addressing measures to control greenhouse gas (“GHG”) emissions by July 1, 2020 as set forth in C.R.S. § 25-7-140(2)(a)(III). Plaintiffs originally each filed separate complaints (collectively, the “Complaints”) and, on September 4, 2020, this Court consolidated the two lawsuits.

Plaintiffs’ request for relief addresses a provision within Senate Bill 19-096 providing that, “[t]he [Air Quality Control Commission] shall . . . (III) [b]y July 1, 2020, publish a notice of

proposed rule-making that proposes rules to implement measures that would cost-effectively allow the state to meet its greenhouse gas emission reduction goals.” C.R.S. § 25-7-140(2)(a)(III). Senate Bill 19-096 was enacted on May 30, 2019, along with several other bills directed at reducing GHG emissions from sectors across the economy. The Complaints reference numerous actions to be taken by the AQCC in order to reduce GHG emissions following the enactment of Senate Bill 19-096, including regulations promulgated to reduce GHG emissions from oil and gas facilities and hydrofluorocarbons. (*See* Environmental Defense Fund Complaint, at ¶¶ 23-24). The Complaints allege that the AQCC’s failure to publish a notice of rulemaking to address all GHG emissions from all sectors of the economy by July 1, 2020 constitutes a failure to act under the Colorado Administrative Procedures Act, C.R.S. § 24-4-102. (“CAPA”).

Plaintiffs take provisions passed through Senate Bill 19-096 (C.R.S. § 25-7-140(2)(a)(III)) *and* through House Bill 19-1261 (C.R.S. §§ 25-7-102(2)(g), 25-7-105(1)(e), and 25-7-140) to support their argument of a failure to act by the AQCC:

House Bill 19-1261 established numerical GHG reduction goals, directed the promulgation and subsequent revision of regulations in order to ensure those goals were timely achieved, and established a set of considerations to be taken into account in designing the regulatory framework; Senate Bill 19-096 established a specific deadline for the proposal of regulations to achieve those goals.

(Environmental Defense Fund Complaint, at ¶ 16). With this construction, Plaintiffs place an enormous burden onto the AQCC in an unreasonable and unintended timeline. Further, they read textually absent legislative intent into Senate Bill 19-096.

PSCo seeks to intervene as a party defendant. It is the state’s largest utility company. It engages in the generation, purchase, transmission, distribution, and sale of electricity, as well as the production, transmission, distribution, and sale of natural gas. PSCo is an industry leader in

reducing GHG emissions and states that developing economy-wide GHG emissions reduction regulations is complicated and requires time and consideration. As such, any rulemaking addressing GHG emissions results in a substantive impact to PSCo and its customers across the state. PSCo is concerned that a grant of the relief requested by Plaintiffs could result in an economy-wide GHG regulatory scheme developed in a rushed and non-cost-effective manner that may impact its ability to provide safe, reliable and affordable electricity to its customers.

PSCo is entitled to intervention as a matter of right under C.R.C.P. 24(a)(2). An applicant may intervene by right where there is an interest which will be impaired or impeded by the disposition of the case unless the interest is adequately represented by existing parties. Here, PSCo has significant interests in this action, which directly affects the utility industry and its customers. These interests will be impaired or impeded without its involvement in this case. Also, Defendants, as government agencies, are unable to adequately represent its interests as a utility company or those of its customers.

Alternatively, PSCo is entitled to permissive intervention under C.R.C.P. 24(b). Permissive intervention is allowed upon timely application when the applicant's claim or defense to the main action has a question of law or fact in common, so long as the intervention will not unduly delay or prejudice the rights of the original parties. Here, PSCo's defenses addressing the proposed rulemaking rely on common questions of law and fact. Moreover, its interests will be affected by the outcome of this case, and intervention will not unduly delay or prejudice the adjudication of the rights of the current parties as this case is in the early stage of litigation.

Based upon this, this Court should allow PSCo to intervene as a party defendant and accept its proposed Answers to the Complaints, pursuant to C.R.C.P. 24(c), which are attached as Exhibits A and B.

III. FACTUAL BACKGROUND

In 2019, the Colorado General Assembly passed several different climate-related bills directed at different aspects of emission reductions, including Senate Bill 19-096 (the subject of this litigation and inventorying GHG emissions), Senate Bill 19-236 (emission reductions from the electric sector), and House Bill 19-1261 (GHG emission reduction goals across *all* sectors).¹ More specifically, House Bill 19-1261 establishes economy-wide GHG emissions reduction goals for 2025, 2030, and 2050, and Senate Bill 19-236, in pertinent part, provides a regulatory framework for utilities to develop clean energy plans to meet specific clean energy targets (also emissions reduction-based) in 2030 and 2050. House Bill 19-1261 also provides a safe harbor provision where utilities projected to meet their 2030 clean energy targets under Senate Bill 19-236 through integrated resource planning actions are protected from any additional costs or required emission reductions as a result of any economy-wide GHG emission reductions programs established under House Bill 19-1261. *See* C.R.S. § 25-7-105(e)(VIII)(C). Senate Bill 19-096, on the other hand, had a more limited scope, focusing primarily on GHG emission data collection.

PSCo is an industry leader in reducing GHG emissions. It has pursued and achieved significant emission reductions through a variety of measures as a regulated utility, with the two most prominent examples being emission reductions plans developed pursuant to the Clean Air-

¹ Senate Bill 19-236 and House Bill 19-1261 attached as Exhibits C and D.

Clean Jobs Act (House Bill 10-1365) and PSCo’s Colorado Energy Plan.² The Colorado Energy Plan is PSCo’s most recent achievement to transform its generation fleet, beginning in 2017 and resulting in the accelerated retirement of 660 megawatts (“MW”) of coal-fired electric generation and the acquisition of more than 1,000 MW of wind resources, 700 MW of solar resources with 275 MW of embedded battery storage, and over 350 MW of existing gas resources.³ Following final regulatory approval of the Colorado Energy Plan by the Colorado Public Utilities Commission in September 2019, PSCo—along with other affiliated operating utilities in its different states—announced an industry-leading clean energy goal on December 4, 2018 to reduce carbon dioxide emissions by 80 percent from 2005 levels by 2030 and provide 100 percent carbon dioxide-free electricity by 2050.⁴

After this progressive announcement by PSCo, the General Assembly commenced its 2019 legislative session, which ultimately resulted in passage of Senate Bill 19-096, Senate Bill 19-236, and HB 19-1261, along with bills advancing increased electrification of the transportation sector (Senate Bill 19-077) and continued deployment of community solar gardens (House Bill 19-1003). PSCo participated throughout the legislative session on all of these bills in various capacities, including reviewing draft legislation and providing testimony at legislative hearings.

² Colorado Public Utilities Commission Decision No. C10-1328, attached as Exhibit E.

³ 120-Day Report filed in Colorado Public Utilities Commission Proceeding No. 16A-0396E, attached as Exhibit F; Colorado Public Utilities Commission Decision No. C18-0761, attached as Exhibit G.

⁴ PSCo Announcement from: https://www.xcelenergy.com/company/media_room/news_releases/xcel_energy_aims_for_zero-carbon_electricity_by_2050, attached as Exhibit H.

PSCo's involvement in bills, regulation, and policy advancing emission reductions did not cease when the General Assembly adjourned the 2019 legislative session. PSCo has been and remains an active participant in rulemakings undertaken by the AQCC that relate to emission reductions. This participation includes the rulemakings to inventory GHG emissions and establish rules around the reporting of GHG emissions conducted pursuant to Senate Bill 19-096 (Regulation 22),⁵ to further limit nitrogen oxide emissions from natural gas-fired reciprocating internal combustion engines that equal or exceed 1000 horsepower (Regulation 7),⁶ and to incorporate coal-plant retirement dates into the state's regional haze requirements (Regulation 23). PSCo is also substantively engaged in the development of the Draft Clean Energy Plan Guidance by the Division, which will be further reviewed by the AQCC and is foundational to the verification of GHG emission reductions for the future.⁷ PSCo will file its Clean Energy Plan with the Colorado Public Utilities Commission by March 31, 2021, which will set forth its path to achieve an 80 percent emissions reduction from 2005 levels by 2030, consistent with the requirements of Senate Bill 19-236 and House Bill 19-1261, respectively.

PSCo is a regulated utility providing both electric and gas service to 1.9 million individual and business customers throughout Colorado. Its substantive participation in the legislative process related to the passage of the suite of legislation in 2019 was and is based upon the potential impacts on its business and the services it provides to its customers. PSCo's ultimate objective

⁵ Prehearing Statement and Rebuttal Statement in *In the Matter of Proposed Regulation No. 22*, attached as Exhibit I.

⁶ Prehearing Statement and Rebuttal Statement in *In the Matter of Revisions to Regulation No. 7*, attached as Exhibit J.

⁷ PSCo Comments on Draft Clean Energy Plan Guidance, attached as Exhibit K.

was and is to ensure the well-considered and appropriate development of Colorado law—and eventual implementing regulations—addressing the reduction of GHG emissions from the utility sector and the broader economy. Plaintiffs’ failure to act argument under the CAPA works at cross-purposes with PSCo’s objective; indeed, the Complaints seek to force a rulemaking of significant scope and historic importance on an unnecessarily expedited timeline.

IV. LEGAL ANALYSIS

“Under C.R.C.P. 24, a non-party may intervene in a civil action as a matter of right, or by way of a permissive intervention.” *Feigin v. Alexa Grp., Ltd.*, 19 P.3d 23, 26 (Colo. 2001). “The legal concept of intervention is based upon the natural right of a litigant to protect himself from the consequences of an action against one in whose cause he has an interest, or by the result of which he may be bound.” *Grijalva v. Elkins*, 287 P.2d 970, 972 (Colo. 1955); *Mauro by & through Mauro v. State Farm Mut. Auto. Ins. Co.*, 410 P.3d 495, 500 (Colo. App. 2013). C.R.C.P. 24 is to be liberally construed so as to permit resolution of all related controversies in one action. *Feigin*, 19 P.3d at 26 (“Rule 24 should be liberally interpreted to allow, whenever possible and compatible with efficiency and due process, issues related to the same transaction to be resolved in the same lawsuit and at the trial court level”); *Great Neck Plaza, L.P. v. Le Peep Restaurants, LLC*, 37 P.3d 485, 488 (Colo. App. 2001) (“intervention should be liberally construed to permit settlement of all related controversies in one action”); *Tekai Corp. v. Transamerica Title Ins. Co.*, 571 P.2d 321, 325 (Colo. App. 1977) (“C.R.C.P. 24 is to be liberally construed in order that all related controversies may be resolved in one action”).

A. PSCO IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

Under C.R.C.P. 24(a)(2), an applicant may intervene as a matter of right when: “(1) the applicant claims an interest in the subject matter of the litigation; (2) the disposition of the case may impede or impair the applicant’s ability to protect that interest; and (3) the interest is not adequately represented by existing parties.” *Feigin*, 19 P.3d at 28.

1. PSCO HAS AN INTEREST IN THE SUBJECT MATTER OF THIS LITIGATION.

Colorado takes a flexible approach to determine whether a party has claimed an interest that merits intervention. *Cherokee Metro. Dist. v. Meridian Serv. Metro. Dist.*, 266 P.3d 401, 404 (Colo. 2011); *Feigin*, 19 P.3d at 29. The existence of an interest under this rule should be determined in a liberal manner. *Id.*; *Mauro*, 410 P.3d at 498; *O’Hara Grp. Denver, Ltd. v. Marcor Hous. Sys., Inc.*, 595 P.2d 679, 687 (Colo. 1979). Courts examine only what interest is claimed by the intervenor, not whether he or she will ultimately be successful in litigation. *Mauro*, 410 P.3d at 498. “The interest prong is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Cherokee Metro.*, 266 P.3d at 404; see *Utah Ass’n of Ctys. v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001) (sufficient interest in the creation of a national monument was established where the intervenors were vocal advocates for its creation, regularly commented on and participated in the government’s monument land-management plan, and had an economic stake in its existence); *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 295 F.3d 1111, 1115 (10th Cir. 2002) (“the threat of economic injury from the outcome of litigation undoubtedly gives a petitioner the requisite interest”).

PSCo's core business is the regulated generation, transmission, and distribution of electricity and gas to its customers. This business is intertwined with the issues related to emissions of GHGs, and PSCo has proactively sought to reduce these emissions from its system. The constructive development and timing of any rules relating to cost-effective GHG emission reductions therefore results in PSCo having an interest in the development of any such rules. Under the liberal standard of determining an interest articulated by Colorado courts, PSCo satisfies this prong of the analysis for intervention by right. *See Feigin*, 19 P.3d at 29.

2. PSCO'S INTERESTS WILL BE IMPAIRED OR IMPEDED IF INTERVENTION IS NOT PERMITTED.

"[T]he party seeking intervention by right must show that it is so situated that the disposition of the underlying action may as a practical matter impair its ability to protect its interest." *Cherokee Metro.*, 266 P.3d at 406. "An intervenor's interest is impaired if the disposition of the action in which intervention is sought will prevent any future attempts by the applicant to pursue his interest." *Feigin*, 19 P.3d at 30; *see Mauro*, 410 P.3d at 499 (permitting intervention and finding interest impaired because intervenor had no other practical alternative but to request intervention). "The rule is satisfied whenever disposition of the present action would put the movant at a practical disadvantage in protecting its interest." 7C Charles Alan Wright, Arthur R. Miller, Mary Kay Kane & Richard L. Marcus, *Federal Practice and Procedure* § 1908.2 (3d ed. 1997).

The disposition of this action will impair or impede PSCo's core business interests, and this impairment will extend to its customers to the extent the disposition of this case impacts the delivery of the services it provides. PSCo is an industry leader in GHG emission reductions and will continue its actions to advance GHG emission reduction goals set forth in Colorado statute.

Consistent with this objective, the well-considered and appropriate development of any rules regulating GHG emissions is of paramount importance to PSCo given that the cost its customers pay for electric and gas service is related to the regulatory scheme developed to meet the economy-wide emission reduction goals. To the extent these rules are developed haphazardly and without due consideration of the numerous factors and information involved on a forced timeline that is inconsistent with the goals of the General Assembly—an outcome possible if Plaintiffs are ultimately successful with their failure to act theory—PSCo’s interests will be impaired by the outcome of this action. *See Cherokee Metro.*, 266 P.3d at 406. Therefore, PSCo satisfies the second prong required for intervention by right under Colorado law.

3. PSCO’S INTERESTS ARE NOT ADEQUATELY REPRESENTED BY THE GOVERNMENT DEFENDANTS.

“The third requirement for intervention as a matter of right under C.R.C.P. 24(a)(2) is that the intervenor’s interest must not be adequately represented by the existing parties to the action.” *Mauro*, 410 P.3d at 499. Colorado courts evaluate the “adequacy of representation” element using the following three categories:

(1) If the interest of the absentee is not represented at all, or if all existing parties are adverse to the absentee, then there is no adequate representation. (2) On the other hand, if the absentee’s interest is identical to that of one of the present parties, or if there is a party charged by law with representing the absentee’s interest, then a compelling showing should be required to demonstrate why this representation is not adequate. (3) But if the absentee’s interest is similar to, but not identical with, that of one of the parties, a discriminating judgment is required on the circumstances of the particular case, although intervention ordinarily should be allowed unless it is clear that the party will provide adequate representation for the absentee.

Cherokee Metro., 266 P.3d at 407 (quoting 7C Charles Alan Wright, Arthur R. Miller, Mary Kay Kane & Richard L. Marcus, *Federal Practice and Procedure* § 1909 (3d ed. 1997)). The burden

of establishing inadequate representation is minimal, only requiring a showing that the representation may be inadequate. *WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1199 (10th Cir. 2010); *Utah Ass'n of Ctys.*, 255 F.3d at 1253.

“Where a government agency may be placed in the position of defending both public and private interests, the burden of showing inadequacy of representation is satisfied.” *WildEarth Guardians*, 604 F.3d at 1200 (“[I]t is on its face impossible for a government agency to carry the task of protecting the public’s interests and the private interests of a prospective intervenor”). “In litigating on behalf of the general public, the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor. . . . This potential conflict exists even when the government is called upon to defend against a claim which the would-be intervenor also wishes to contest.” *Utah Ass'n of Ctys.*, 255 F.3d at 1256; *see also Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977); *Georgia v. U.S. Army Corps of Engineers*, 302 F.3d 1242, 1259 (11th Cir. 2002) (“we do not believe that a federal defendant with a primary interest in the management of a resource has interests identical to those of an entity with economic interests in the use of that resource”); *New York Pub. Interest Research Grp., Inc. v. Regents of Univ. of State of N. Y.*, 516 F.2d 350, 352 (2d Cir. 1975) (interests of the intervenor-pharmacists were not adequately represented where there was a likelihood that they would “make a more vigorous presentation of the economic side of the argument”); *Concerning Application for Underground Water Rights*, 304 P.3d 1167, 1171 n.1 (Colo. 2013) (“[A]uthority interpreting a corresponding federal rule [on intervention is] instructive because Colorado Rules of Civil Procedure were modeled on the federal rules”).

In addition, this element is satisfied where the intervenor has expertise that the government may not. *Utahns for Better Transp.*, 295 F.3d at 1117 (citing *Nat'l Farm Lines v. I.C.C.*, 564 F.2d 381, 383 (10th Cir. 1977)); *see also Costle*, 561 F.2d at 913 (finding no adequate representation where the issues turned on questions of technical detail and data and intervenor's experience and expertise in the relevant fields would "reasonably be expected to contribute to the informed resolutions of these questions").

PSCo's interest is unique from that of Defendants. There is no representative of the utility industry in this proceeding and, as Colorado's largest utility, PSCo is in a position to represent these interests on behalf of itself and its 1.9 million individual and business customers. Defendants do not operate an electric or gas utility and are not a regulated entity potentially subject to rules implementing an economy-wide GHG emission reduction program. As a utility, PSCo has an interest and expertise that Defendants do not have. *See Utahns for Better Transp.*, 295 F.3d at 1117 (citing *Nat'l Farm Lines v. I.C.C.*, 564 F.2d 381, 383 (10th Cir. 1977)). PSCo's engagement with the legislative process and role as a provider of electric and gas service to Coloradans substantively contributes to the informed resolution of the questions presented in this controversy. A denial of PSCo's intervention would also put Defendants in the position of attempting to defend both public and private interests. While PSCo is a regulated public utility, it is also investor-owned, and has its own customer base, situating it differently than the government and public interests potentially addressed by the government Defendants, which provides further support for a grant of intervention. *See WildEarth Guardians*, 604 F.3d at 1200.

PSCo satisfies this third and final prong to establish intervention by right. Its interests are not adequately represented by the government Defendants and PSCo provides necessary and

currently absent perspectives and positions that are required for the correct resolution of the questions at issue in this case.

B. PSCo’s PERMISSIVE INTERVENTION IS ALSO PROPER.

Pursuant to C.R.C.P. 24(b), a court may grant permissive intervention “when an applicant’s claim or defense and the main action have a question of law or fact in common,” so long as the intervention “will not delay or prejudice the rights of the original parties.” C.R.C.P. 24(b); *see also CF & I Steel, L.P. v. Air Pollution Control Div.*, 77 P.3d 933, 939 (Colo. App. 2003); *In re Marriage of Paul*, 978 P.2d 136, 139 (Colo. App. 1998). Once the threshold requirement of a common question of law or fact is satisfied, courts may also consider factors such as: (1) whether the would-be intervenor’s input adds value to the existing litigation; (2) whether the petitioner’s interests are adequately represented by the existing parties; and (3) the availability of an adequate remedy in another action. *Lower Arkansas Valley Water Conservancy Dist. v. United States*, 252 F.R.D. 687, 690–91 (D. Colo. 2008). C.R.C.P. 24(b) gives the trial court considerable discretion to grant permissive intervention. *In re Marriage of Paul*, 978 P.2d at 139.

PSCo satisfies the requirements for permissive intervention. PSCo is aligned with Defendants in that there is no failure to act by the deadline set forth in Senate Bill 19-096. This presents a question of law and fact in common. Further, PSCo’s positions will add important perspective to this litigation given its unique status as a utility potentially subject to GHG emission reduction rules promulgated by Defendants. PSCo’s engagement in the legislative process resulting in the passage of the bill at issue—among others—can add information currently absent from this case, from the perspective of a regulated industry and its individual and business customers. This in-depth background on the passage of these bills is particularly important here

given that Plaintiffs' failure to act arguments are rooted in provisions passed through Senate Bill 19-096 (C.R.S. § 25-7-140(2)(a)(III)) and through House Bill 19-1261 (C.R.S. §§ 25-7-102(2)(g), 25-7-105(1)(e), and 25-7-140). PSCo's unique interests are not adequately represented by any existing party as the only parties to this proceeding are non-governmental conservation organizations and the government.

Finally, there is no adequate remedy for PSCo outside of this case. If this Court compels Defendants to act by granting the relief requested by Plaintiffs, PSCo could be subject to GHG emission reduction rules that are not well-developed or considered and promulgated on an unnecessary timeline, with PSCo and its customers bearing any potential harm that results. Accordingly, to the extent this Court determines that PSCo does not satisfy the requirements for an intervention by right, PSCo should be granted permissive intervention.

Intervention will not prejudice or delay the rights of the current parties. This case is at an early stage of litigation. This Court has not yet entered a case management order and there are no briefing schedules or other pertinent deadlines. Given this, the current parties can include PSCo in case management. Intervention does not affect any deadlines, delay proceedings, or otherwise prejudice the parties. Instead, intervention will facilitate the resolution of related controversies in one action. *See Feigin*, 19 P.3d at 26 ("Rule 24 should be liberally interpreted to allow, whenever possible and compatible with efficiency and due process, issues related to the same transaction to be resolved in the same lawsuit and at the trial court level").

V. CONCLUSION

PSCo should be granted intervention pursuant to C.R.C.P. 24(a)(2) and (b). Accordingly, pursuant to C.R.C.P. 24(c), PSCo requests that this Court accept its proposed Answers to the

Complaints, attached hereto as Exhibits A and B, as deemed filed, and for such other relief as it deems appropriate.

DATED this the 9th day of November, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 9th day of November, 2020, a true and correct image of the foregoing was e-filed through CCEFS and thereby served via electronic notification upon the following:

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