

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

**PROCEEDING NO. 16A-0396E**

---

IN THE MATTER OF THE APPLICATION OF THE PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS 2016 ELECTRIC RESOURCE PLAN

---

**PROCEEDING NO. 17A-0797E**

---

IN THE MATTER OF THE APPLICATION OF THE PUBLIC SERVICE COMPANY OF COLORADO TO MODIFY THE DEPRECIATION SCHEDULES FOR THE EARLY RETIREMENT OF COMANCHE 1 AND COMANCHE 2 GENERATING UNITS, ESTABLISH A REGULATORY ASSET TO COLLECT INCREMENTAL DEPRECIATION, REDUCE THE RENEWABLE ENERGY STANDARD ADJUSTMENT COLLECTION TO ONE PERCENT, AND IMPLEMENT A GENERAL RATE SCHEDULE ADJUSTMENT, CONTINGENT ON THE APPROVAL OF THE COLORADO ENERGY PLAN PORTFOLIO IN PROCEEDING NO 16A-0396E.

---

**COALITION OF RATEPAYERS' SUPPLEMENTAL FILING OF ADDITIONAL INFORMATION IN SUPPORT OF ITS MOTION FOR FEES AND COSTS**

---

The Coalition of Ratepayers (“Coalition”), by and through its attorneys, submits its Supplemental Filing of Additional Information in Support of its Motion for Fees and Costs as follows:

**I. Introduction**

In accordance with the Commission’s Interim Decision(s) Granting Motion(s) to Reply and Permitting the Filing of Additional Information Supporting the Motion for Fees and Costs issued on December 7, 2018, (Decision No. C18-1108-I in Docket 16A-0396E and Decision No. C18-1107-I in Docket 17A-0797E), the Coalition submits the foregoing brief and supporting attachments A-F. The information provided herein addresses the requirement under C.R.S. § 40-6.5-105(d) that a claim for “[t]he expenses of other intervenors must be reasonable in amount.” The Coalition seeks an award of its attorney fees, costs, and expert witness expenses related to its

participation in both dockets 16A-0396E and Docket 17A-0797E. For Docket 16A-0396E, the Coalition seeks an award of **\$361,527.99**. For Docket 17A-0797E, the Coalition seeks an award of **\$248,545.82**.

In support of its claim for fees and costs, the Coalition has provided detailed billing records for time spent on these matters by attorneys and paraprofessionals, records of costs incurred, and the invoices from its expert consultant. The expenses were reasonable with respect to the hours spent on the litigation and the rates charged. The various costs were necessarily incurred in furtherance of the Coalition's participation in the two dockets. As noted its Motion, the Coalition has endeavored to keep its expenses low in these matters, but the costs of litigation are significant and have placed a hardship on the Coalition. As the Coalition's expenses have been reasonable in amount and the Coalition believes it also meets the remaining requirements of C.R.S. § 40-6.5-105, the Coalition requests the Commission award the Coalition its expenses related to these two matters.

Upon consideration of the Commissioners' Order and comments during deliberations concerning the Motion, and upon further review of the information being submitted in support of its Motion, the Coalition no longer seeks a protective order. With relatively few redactions to protect sensitive financial account numbers, information protected by attorney-client privilege, and attorney work-product, the Coalition believes that the information provided is sufficient for the Commission to reach a determination as to the reasonableness of the Coalition's expenses.

## **II. Summary of Attorney Fees**

### **a. Legal Standard**

Colorado courts employ the "lodestar" method to determine the reasonableness of attorney fees. "Under the lodestar method, the court calculates the reasonable amount of attorneys' fees by determining the number of hours reasonably expended on the litigation and then multiplying that

number by a reasonable hourly rate.”<sup>1</sup> Once the lodestar amount is determined, that basis amount may be adjusted upward or downward.<sup>2</sup>

Counsel is not required “to record in great detail how each minute of his time was expended. But at least counsel should identify the general subject matter of his time expenditures.”<sup>3</sup> Providing time records kept contemporaneously with the work done that include the date, the attorney, the time expended, and a general statement of work done satisfy the requirement.<sup>4</sup> “If the attorney provides a reason and rational basis for the work done, he or she should be compensated accordingly....”<sup>5</sup> Fees should be awarded based on the prevailing market rate by private lawyers in the community.<sup>6</sup>

#### **b. Overview**

The Coalition of Ratepayers retained the legal services of Jackson Walker, LLP and Madsen & Associates, P.C. Meghan Griffiths was the primary attorney at Jackson Walker, LLP providing legal representation on both Dockets 16A-0396E and 17A-0797E. Ms. Griffiths charged a rate of \$595/hour on these matters. Ms. Griffiths’ affidavit is included herewith as Attachment A. Detailed descriptions of the services provided by Jackson Walker, LLP along with legal costs are also provided with the affidavit. *See Attachment B*. Similarly, for the legal services and costs associated with Madsen & Associates, P.C., there are two affidavits and sets of supporting documents. *See Attachments C & D*. Meredith Kapushion was the primary attorney at Madsen &

---

<sup>1</sup> *Mercantile Adjustment Bureau, LLC v. Flood*, 278 P.3d 348, 352 (Colo. 2012); *see also Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

<sup>2</sup> *Balkind v. Telluride Mt. Title Co.*, 8 P.3d 581, 588 (Colo. App. 2000).

<sup>3</sup> *Hensley v. Eckerhart*, 461 U.S. at 437, n.12.

<sup>4</sup> *American Water Dev., Inc. v. City of Alamosa*, 874 P.2d 352, 383 (Colo. 1994).

<sup>5</sup> *Spensieri v. Farmers Alliance Mutual Ins. Co.*, 804 P.2d 268, 271 (Colo. App. 1990).

<sup>6</sup> *Balkind*, 8 P.3d at 588-89 (Colo. App. 2000).

Associates, P.C. providing legal representation on both Dockets 16A-0396E and 17A-0797E. She provided legal services at \$80/hour for 2017 and \$100/hour for 2018. Ms. Madsen has excluded her fees from the Coalition's claim<sup>7</sup>, but has provided an affidavit and documentation for costs and for other attorney and legal support services incurred for these matters. Ms. Kapushion generates her own invoices which are then reviewed and passed through to clients by Madsen & Associates, P.C. Accordingly, her invoices are provided here, separate from the Madsen & Associates, P.C. invoices.

With respect to the supporting documents, certain information has been redacted. Bank account, routing, and Tax ID numbers have been redacted as they are sensitive and not germane to the Motion. In addition, portions of those time entries that include confidential attorney-client information have been redacted along with those portions of entries that include confidential attorney work product.<sup>8</sup> These redactions are minimal and should not impact the Commission's ability to assess the reasonableness of the fees claimed. Additional redactions appear in the Madsen & Associates, P.C. invoices (Attachment C) to omit unrelated items that appear on the original invoices. As shown in the summary for those invoices, however, the time entries that are unrelated to the cases at issue are excluded from the Coalition's claim and any calculations therein.

---

<sup>7</sup> The Coalition notes that totals herein are through the dates indicated on the affidavits and supporting documentation, but that its legal fees and expenses are ongoing.

<sup>8</sup> See *Black v. Southwestern Water Conservation Dist.*, 74 P.3d 462, 467 (Colo. 2003) (internal citations omitted) ("The attorney-client privilege is codified in Colorado by statute and operates to protect communications between attorney and client relating to legal advice. The privilege extends only to matters communicated by or to the client in the course of gaining counsel, advice, or direction with respect to the client's rights or obligations."); *Denver Post Corp. v. University of Colorado*, 739 P.2d 874, 881 (Colo. App. 1987) (internal citations omitted) ("The work product privilege exists not to protect a confidential relationship, but to promote fairness in the adversary system by safeguarding the fruits of an attorney's trial preparations, which have been paid for by his client, from being used without cost by his opponent.").

Only those portions of the Madsen & Associates, P.C. invoices relevant to the Coalition’s Motion for Fees and Costs have been included.

The attorney fees incurred by the Coalition are summarized as follows:

	Docket 16A-0396E	Docket 17A-0797E
Jackson Walker, LLP	\$236,992.75	\$145,981.97
Madsen & Associates, P.C. <sup>9</sup>	\$3,150.00	\$3,150.00
M. Kapushion	\$34,093.00	\$12,615.00
Totals	\$274,235.75	\$161,746.97

**c. Hours**

The number of hours spent on the two dockets is described in detail in the attached invoices. Where possible, legal work was directed to attorneys with lower rates to minimize overall costs. The litigation spanned over a year, involved a large number of parties, involved a specialized area of the law, and was very complex. As the invoices and supporting documents demonstrate, the attorneys took efforts to staff the case efficiently and there was little, if any, duplication in the work done. In addition, Shayne Madsen has excluded her hours from the calculation. With these factors in consideration, the total number of hours spent on each of these dockets was very reasonable for the type of case and amount of work that was involved in the litigation.

**i. Docket 16A-0396E**

Docket 16A-0396E	Attorney & Paralegal Hours	Avg. Hourly Rate
Jackson Walker	448.6	\$528.29
Madsen & Associates <sup>10</sup>	12.75	\$67.06
M. Kapushion	355.8	\$95.43
Totals	817.15	\$333.40

<sup>9</sup> As the fees incurred were not separated by docket, they are split here 50/50. This total includes administrative support costs incurred for this litigation.

<sup>10</sup> As the fees incurred were not separated by docket, they are split here 50/50. Only the attorney fees for P. Almaas and J. Pryzgodka are shown here (a total of \$1,710, or \$855 per docket). Administrative support time is excluded for purposes of calculating legal rates.

The hours spent on this matter for the two primary attorneys are as follows:

M. Griffiths = 355.8 hours  
M. Kapushion = 357.25 hours

The total hours spent on the matter by all attorneys and paralegals is 817.15 hours. Given the nature of the case and the voluntary exclusion of Ms. Madsen's hours, the Coalition submits that the hours are appropriate and that no downward adjustment should be made in any lodestar calculation.

**ii. Docket 17A-0797E**

Docket 16A-0396E	Attorney Hours	Avg. Hourly Rate
Jackson Walker	264.3	\$552.33
Madsen & Associates <sup>11</sup>	12.75	\$67.06
M. Kapushion	126.15	\$100.00
Totals	403.2	\$393.35

The hours spent on this matter for the two primary attorneys are as follows:

M. Griffiths = 225 hours  
M. Kapushion = 126.15 hours

The total hours spent on the matter by all attorneys and paralegals is 403.2 hours. Given the nature of the case and the voluntary exclusion of Ms. Madsen's hours, the Coalition submits that the hours are appropriate and that no downward adjustment should be made in any lodestar calculation.

**d. Rates**

As noted above, the hourly rates for the primary attorneys on this case were \$595/hr for Ms. Griffiths and between \$80/hour and \$100/hour for Ms. Kapushion. With respect to both attorneys, work was performed at discounted rates.<sup>12</sup> The simple average rate for M. Griffiths and

---

<sup>11</sup> As the fees incurred were not separated by docket, they are split here 50/50. Administrative support time is also excluded here.

<sup>12</sup> As shown on the Jackson Walker invoices, Ms. Griffiths normal rate is \$700/hour. Jackson Walker, LLP reduced their invoices by a total of \$67,583.78; part of this is reflected in Ms.

M. Kapushion was \$337.50/hour for 2017 and \$347.50/hour for 2018. When weighted by hours of work performed, the blended hourly rate for the ERP matter, Docket 16A-0396E, is \$344.71/hour<sup>13</sup>. The weighted average for Docket 17A-0797E is \$417.17/hour<sup>14</sup>. When all attorneys who staffed the matter are accounted for, the weighted average for Docket 16A-0396E is **\$333.40/hour**, and the weighted average for Docket 17A-0797E is **\$393.35/hour**.

The hourly rates were reasonable for the type of legal work provided. Litigation in the area of electric utilities is a specialized practice area that requires some level of expertise and on the part of legal practitioners. Ms. Griffiths has extensive experience in public utilities matters, with approximately fifteen years of experience in electric regulatory and utility matters. Her hourly rate was higher compared to other attorneys staffing the case, but it is reasonable and not high with respect to other attorneys in this area of practice. Her standard hourly rate of \$700/hour is an appropriate market rate for attorneys in her area of practice and with her level of experience. Her reduced rate of \$595/hour is reasonable and should not be adjusted in any lodestar calculation.

Ms. Kapushion is an experienced civil litigator and administrative law attorney in Colorado. Ms. Kapushion's discounted rates of \$80-\$100/hour are well-below market rates and are patently reasonable for legal services in the Colorado area. For purposes of a lodestar calculation, it would be appropriate to adjust this amount upwards to a market rate for comparable services.<sup>15</sup>

For simplification purposes, the Commission may look to the blended rates of the attorneys. The blended hourly rate for Docket 16A-0396E is \$333.40. For Docket 17A-0797E, the blended

---

Griffiths' reduced rate. While Ms. Kapushion's invoices do not show the discount, her ordinary hourly rate has been discounted considerably.

<sup>13</sup>  $((355.8 * \$595) + (81.6 * \$80) + (275.65 * \$100)) / 713.05 = \$344.71/hr$

<sup>14</sup>  $((225 * \$595) + (126.15 * \$100)) / 351.15 = \$417.17/hr$

<sup>15</sup> The Coalition submits that a rate between \$300-\$400/hour is appropriate.

rate is \$393.35/hour. For purposes of a lodestar calculation, these are well within the range of reasonable hourly rates for attorneys in this area. If anything, these figures are low given the voluntary discounts that were afforded to the Coalition of Ratepayers by both law firms, and the prevailing market rates for attorneys in this practice area and locale.

**III. Summary of Costs**

The costs incurred by the Coalition of Ratepayers are as follows:

	Docket 16A-0396E	Docket 17A-0797E
Jackson Walker	\$4,263.92	\$875.90
Madsen & Associates <sup>16</sup>	\$470.51	\$13.26
M. Kapushion	\$514.51	\$155.47
Totals	\$5,248.94	\$1,044.63

These same costs are shown here by category:

Docket 16A-0396E	Jackson Walker	Madsen & Associates	M. Kapushion	Totals
Pro Hac Vice Fee			\$300.00	\$300.00
Postage		\$460.27	\$87.19	\$547.46
Parking	\$45.00	\$10.24	\$29.00	\$84.24
Mailing Supplies			\$98.32	\$98.32
Westlaw	\$137.20			\$137.20
Teleconf. Charges	\$23.81			\$23.81
Airfare	\$670.96			\$670.96
Delivery Fees	\$286.60			\$286.60
Copying	\$1,185.20			\$1,185.20
Lexis Research	\$96.60			\$96.60
Oversize Exhibits	\$118.39			\$118.39
Rental Car	\$260.43			\$260.43
Hotel	\$1,183.99			\$1,183.99
Staff Overtime	\$154.00			\$154.00
Hearing Supplies	\$101.74			\$101.74
Totals	\$4,263.92	\$470.51	\$514.51	\$5,248.94
Docket 17A-0797E	Jackson Walker	Madsen & Associates	M. Kapushion	Totals
Postage		\$13.26	\$95.47	\$108.73



Parking			\$60.00	\$60.00
LexisCharges	\$0.18			\$0.18
Travel	\$175.00			\$175.00
Delivery Fees	\$43.86			\$43.86
Taxi	\$23.21			\$23.21
USB Drive	\$8.65			\$8.65
Hotel	\$625.00			\$625.00
Totals	\$875.90	\$13.26	\$155.47	\$1,044.63

The costs incurred were reasonable and necessary for the litigation of the matters at issue. The total costs for Docket 16A-0396E were **\$5,248.94** and the total costs for Docket 17A-0797E were **\$1,044.63**. These costs are low given the size and complexity of the matters involved.

The total attorney fees and costs for Docket 16A-0396E is **\$279,484.69**. The total attorney fees and costs for Docket 17A-0797E is **\$162,791.60**. The combined total of attorney fees and costs for both dockets is **\$442,276.29**.

#### **IV. Summary of Expert Fees**

Expert services for work performed by Charles S. Griffey and associated expenses totaled **\$167,797.52**. See Affidavit of Charles Griffey, Attachment E, and Peregrine Consulting invoices, Attachment F. The invoices were not split between the two related dockets. However, the work performed up through February of 2018 was done exclusively for Docket 16A-0396E and time entries reflect preparation of testimony and for other work related to that Docket. Work performed after February was primarily for the AD/RR Docket, Docket No. 17A-0797E. Approximately 15.25 hours in this time frame is attributable to work related to the 120 Day Report filed by PSCo and the IE Report in the ERP Docket, Docket 16A-0396E. Thus, the expert fees may be reasonably attributed to the two dockets as follows:

Docket 16A-0396E

Invoice	Month/Year Invoiced	Hours	Total for Labor	Additional Expenses	Total
20171102_04	October 2017	7.75	\$3,293.75	0	\$3,293.75
20171201_04	November 2017	5.75	\$2,443.75	0	\$2,443.75
20180106_01	December 2017	52	\$22,100.00	0	\$22,100.00
20180201_01	January 2018	51.75	21,993.75	0	\$21,993.75
20180302_03	February 2018	57.25	\$24,331.25	\$1,399.55	\$25,730.80
20180402_02	March 2018	0	0	0	
20180501_02	April 2018	0	0	0	
20180601_1	May 2018	0	0	0	
20180701_2	June 2018	2.75	\$1,168.75	0	\$1,168.75
20180802_2	July 2018	8.25	\$3,506.25	0	\$3,506.25
20180902_2	August 2018	4.25	\$1,806.25	0	\$1,806.25
<b>Docket Totals:</b>		<b>189.75</b>	<b>\$80,643.75</b>	<b>\$1,399.55</b>	<b>\$82,043.30</b>

Docket 17A-0797E

Invoice	Month/Year Invoiced	Hours	Total for Labor	Additional Expenses	Total
20180402_02	March 2018	53.25	\$22,631.25	0	\$22,631.25
20180501_02	April 2018	6.5	\$2,762.50	0	\$2,762.50
20180601_1	May 2018	1.0	\$425.00	0	\$425.00
20180701_2	June 2018	71.5	\$30,387.50	0	\$30,387.50
20180802_2	July 2018	44.75	\$19,018.75	\$1,710.47	\$20,729.22
20180902_2	August 2018	20.75	\$8,818.75	0	\$8,818.75
<b>Docket Totals:</b>		<b>197.75</b>	<b>\$84,043.75</b>	<b>\$1,710.47</b>	<b>\$85,754.22</b>
Totals		387.5	\$164,687.50	\$3,110.02	\$167,797.52

The total for expert services related to Docket 16A-0396E is **\$82,043.30** and the total for Docket 17A-0797E is **\$85,754.22**. The combined total for both dockets is **\$167,797.52**.

The fees for Mr. Griffey's services were reasonable in light of his expertise, particularly with respect to the economics of electric utility plants and knowledge of the Strategist modeling

software. The hours spent by Mr. Griffey on these matters are reasonable given the complexity of the ERP, the number of modelling variations, the numerous disputes over modeling assumptions, various modeling errors, the ongoing revisions to the models between Phase I and Phase II of the ERP process, the depth and complexity of testimony offered by the parties, and the necessity of availing himself to the Commission and parties at two hearings. His hourly rate of \$425/hour was reasonable in light of his experience and expertise.

**V. Conclusion**

As set forth in its Motion, the Coalition requests an award of its fees and costs under C.R.S. § 40-6.5-105. This supplemental filing addresses subsection (d) of the statute, which requires that “The expenses of other intervenors must be reasonable in amount.” The Coalition avers that the expenses it incurred for its participation in the two related Electric Resource Plan dockets, Docket 16A-0396E and 17A-0797E, were reasonable and meet the statutory requirement. The totals for the dockets are as follows:

Expense Totals for Docket 16A-0396E:

Attorney Fees:	\$274,235.75
Costs:	\$5,248.94
Expert witness fees:	\$82,043.30
<hr/>	
	<b>\$361,527.99</b>

Expense Totals for Docket 17A-0797E:

Attorney Fees:	\$161,746.97
Costs:	\$1,044.63
Expert witness fees:	\$85,754.22
<hr/>	
	<b>\$248,545.82</b>

The total amount of fees and costs incurred by the Coalition of Ratepayers for both matters through the dates indicated is **\$610,073.81**. Due to the complexity and length of these proceedings, the expenses incurred by the Coalition of Ratepayers have been substantial and have placed a significant financial burden and hardship on the Coalition. For its efforts in assisting the Commission and in vetting the proposed ERP, the Coalition respectfully requests an award of its expenses.

Submitted this 20th day of December, 2018.

/s Meredith Kapushion  
Shayne Madsen, #8750  
Meredith Kapushion, #36772  
Madsen & Associates, P.C.  
7441 Old Mill Trail  
Boulder, CO 80301  
smadsen@COLawyer.net  
mkapushion@COLawyer.net  
(ph) 303-588-1693

Meghan Griffiths  
Jackson Walker LLP  
100 Congress Avenue  
Suite 1100  
Austin, TX, 78701  
mgriffiths@jw.com  
(ph) (512) 236-2363  
(fax) (512) 391-2163

ATTORNEYS FOR COALITION OF RATEPAYERS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served in accordance with the governing procedural orders to all parties of record in this proceeding via the Public Utilities Commission E-Filing system this 20th day of December, 2018.

/s Meredith Kapushion  
Meredith Kapushion