

Decision No. C24-0448

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24AL-0153E

IN THE MATTER OF ADVICE LETTER NO. 1946 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS P.U.C. NO. 8 ELECTRIC TARIFF TO INCREASE THE ELECTRIC DEMAND-SIDE MANAGEMENT COST ADJUSTMENT, TO BECOME EFFECTIVE JULY 1, 2024.

**COMMISSION DECISION ADDRESSING
ADVICE LETTER NO. 1946-ELECTRIC AND
THE ELECTRIC DEMAND-SIDE MANAGEMENT COST
ADJUSTMENT FOR EFFECT JULY 1, 2024, AND
REQUIRING DIRECT TESTIMONY TO SUPPORT
FUTURE ELECTRIC DSMCA FILINGS**

Issued Date: June 27, 2024

Adopted Date: June 17, 2024

I. BY THE COMMISSION

A. Statement

1. On April 1, 2024, Public Service Company of Colorado (“Public Service” or “Company”) filed Advice Letter No. 1946-Electric with tariff sheets to revise its electric Demand-Side Management Cost Adjustment (“DSMCA”) for effect July 1, 2024. Public Service seeks to increase its revenues by approximately \$30.3 million on an annual basis.

2. On April 29, 2024, the Colorado Office of the Utility Consumer Advocate (“UCA”) filed a protest asking that the Commission suspend the proposed DSMCA tariff sheets filed with Advice Letter No. 1946-Electric and set the matter for hearing.

3. This Decision addresses Advice Letter No. 1946-Electric, UCA’s protest, and Public Service’s response to that protest filed on June 3, 2024. Consistent with the discussion

below, we permit the DSMCA tariff sheets filed with Advice Letter No. 1946-Electric to take effect on July 1, 2024, by operation of law. We further direct the Company to file substantial Direct Testimony in its anticipated October 2024 and April 2025 DSMCA advice letter filings that explains in detail: (1) how costs are tracked vis-à-vis authorized budgets and are reconciled with collections; and (2) how the DSMCA will transition back to where the underlying revenue requirement reflects expected annual expenditures during the period the DSMCA is in effect.

B. Discussion

4. Public Service recovers the costs associated with its electric energy efficiency and demand response programs (“DSM programs”) through its electric DSMCA. In accordance with the Company’s DSMCA tariff sheets (*i.e.*, Sheet Nos. 140-140E in Colorado P.U.C. No. 8-Electric), the DSMCA rate changes twice a year. On January 1 of each year, the DSMCA is normally adjusted to reflect the expected program costs for that year. This rate change is accomplished with a filing made on or around the preceding October 1. On July 1 of each year, the rate is normally “trued up” with actual collections and actual expenditures and is further updated to account for a disincentive offset and any performance incentive payments claimed by the Company.

5. In accordance with this advice letter filing schedule, Public Service seeks to increase its revenues beginning July 1, 2024, by approximately \$30.3 million on an annual basis through its Advice Letter No. 1946-Electric filing. The proposed increase addresses: approximately \$21.2 million of under-collections as of December 31, 2023; a disincentive offset of \$3 million; a performance incentive of \$15 million; and a negative true-up of approximately \$8.9 million associated with costs and revenues from 2022.

6. The Company's Advice Letter No. 1946-Electric filing builds on the DSMCA currently in effect starting on January 1, 2024, as filed on October 3, 2023 with Advice Letter No. 1933-Electric in Proceeding No. 23AL-0491E.¹ Because the Company's 2024 DSM program budgets had not yet been established by that October 2023 filing date, the currently effective DSMCA was set at a level to collect \$153.2 million on an annual basis, reflecting a total 2023 DSM Portfolio budget of approximately \$117.5 million (or roughly \$92.9 million for efficiency programs and \$24.6 million for demand response programs). These budget amounts for 2023 were established by Decision No. C23-0381, issued June 8, 2023, in Proceeding No. 22A-0315EG.²

7. In its protest to Advice Letter No. 1946-Electric, UCA states that Decision No. C23-0413, issued on June 22, 2023, in Proceeding No. 22A-0309EG, set a 2024 budget for the Company's electric efficiency programs at \$78 million. UCA explains that the decision also allowed Public Service "20% flexibility in the budget" which could bring the total 2024 budget to \$93.6 million. UCA further points to Public Service's 2023 DSM Annual Status Report, filed on April 1, 2024, in Proceeding No. 22A-0315EG, which explains that the Company spent \$97.1 million for electric energy efficiency in 2023, or, according to UCA, \$3.5 million more than the allowed flex amount allowed for 2024 as set in Decision No. C23-0413.³

8. In its response to UCA's protest, Public Service focuses on UCA's concern that the Company allegedly spent \$3.5 million above the Commission-approved budget flexibility mechanism for 2024 DSM programs as addressed in Decision No. C23-0413. The Company states that under the budget flexibility mechanism, there is no presumption of prudence should the

¹ The DSCMA tariff sheets filed with Advice Letter No. 1933-Electric were allowed to go into effect by operation of law on January 1, 2024.

² Decision No. C23-0381, issued June 8, 2023, in Proceeding No. 22A-0315EG, ¶¶ 19, 21, and 71, pp. 6, 7, and 22, respectively.

³ See Decision No. C23-0413, issued June 22, 2023, in Proceeding No. 22A-0309EG, ¶¶ 34-35.

Company spend funds above the mechanism, but also that there is no Commission prohibition from spending over the budget flexibility mechanism amount. The Company further argues that there is no specific ban on the Company's spending of prudent funds beyond its previously approved budget flexibility amount "such as has occurred here."⁴

9. Public Service further offers the Commission three options for the Commission to address the disputed \$3.5 million. According to the Company, these three options are "more effective than a wholesale suspension of the Company's DSMCA-E rate revision."⁵ The first option entails the Commission denying the UCA's protest and permitting the new DSMCA rates to go into effect. Public Service argues that the UCA has not raised any allegations that the Company's DSM spending has been imprudent. Under the second option, the Commission would direct the Company to place modified DSMCA rates into effect without a formal hearing and on less-than-statutory notice, where such rates omit the disputed \$3.5 million that the UCA has protested. The Company would then file a separate standalone advice letter filing that includes the recovery of the disputed \$3.5 million, allowing the Commission to suspend the recovery of that amount and to have litigation on the Company's recovery of that amount. The Company's third option would involve the Commission allowing the new DSMCA rates to take effect and simultaneously initiating a hearing process within this instant proceeding on those updated rates. If the Commission finds it appropriate to exclude some amount from the DSMCA rate, then the Company could make that true-up in its next DSMCA filing.

10. In its response, Public Service requests that the Commission act as expeditiously as possible on UCA's protest so the Company may implement rates in a timely manner.

⁴ Public Service Response to UCA Protest, p. 2.

⁵ Public Service Response to UCA Protest, p. 2.

C. Conclusions and Findings

11. We decline to set the electric DSMCA tariff sheets filed with Advice Letter No. 1946-Electric for hearing as requested by UCA in its protest. We find that the increased DSMCA rates, designed to collect an additional \$30.3 million starting July 1, 2024, are unrelated to the Company's 2024 DSM budgets and expenditures and thus do not tie to the UCA's allegation of overspending. While an overall spending budget for 2024 programs was indeed established through Decision No. C23-0413 as referenced by UCA in its protest, the 2024 programs associated with that budget have not yet commenced because they are still under review in an ongoing case (*i.e.*, Proceeding No. 23A-0589EG). Moreover, the UCA has not disputed the Company's 2023 spending relative to 2023 budget parameters established in Proceeding No. 22A-0315EG. Public Service has further been operating under authorizations to continue 2022 DSM programs into 2023⁶ and 2023 programs into 2024,⁷ and neither UCA's protest nor Public Service's response address the impact of those authorizations in their pleadings. The relevance of UCA's protest to the instant tariff filing also depends on nature of the underlying annual revenue requirement being collected by the Company's DSMCA, whereas UCA did not protest the use of 2023 budget parameters for the DSMCA revenue collections in 2024, as currently in effect.

12. Nevertheless, UCA's protest has exposed deficiencies in Public Service's DSCMA-related tariff filings in relation to established budgets in other proceedings, the parameters that govern spending related to those established budgets, and the applicable periods of revenue collection. Although Advice Letter No. 1946-Electric meets the minimum requirements for a routine change in the electric DSMCA, much more information must be provided by Public

⁶ Decision No. C23-0381, issued on June 8, 2023, Proceeding No. 22A-0315EG, ¶ 74, p. 23.

⁷ Decision No. R24-0086-I, issued on February 9, 2024, Proceeding No. 23A-0589EG, ¶¶ 37-38, pp. 13-14.

Service in future DSMCA filing for the Commission to continue fulfilling its obligations in ensuring just and reasonable rates.

13. We are also troubled by Public Service's assertions in its response to UCA's protest regarding the prudence of expenditures above established budget levels. The Commission and the parties devoted considerable resources to establishing annual DSM budgets and related spending parameters in Proceeding No. 22A-0309EG for program years 2024 through 2026 and in Proceeding No. 22A-0315EG for program year 2023. The electric DSMCA will also soon be collecting substantially more revenue associated with beneficial electrification programs, where such budgets are also subject to caps and related budget flexibility mechanisms.⁸ Public Service cannot assume it is entitled to recover costs outside of established budget requirements through the normal operation of the DSMCA. Instead, it is reasonable for the Commission both to expect Public Service to provide *prima facie* evidence in support of its spending outside of established budget parameters with its DSMCA advice letter filings and to set for hearing and suspend the effective date of tariffs based on revenue requirements that could include excess spending that is ultimately determined to be prudent. Hence, it is unnecessary for UCA to allege that expenditures above an established budget were imprudent to justify its protest and request for hearing as Public Service claims is required in its response to UCA's protest.

14. We therefore direct Public Service to file substantial Direct Testimony in its next two DSMCA filings (*i.e.*, the October 2024 filing for DSMCA rates for effect January 1, 2025 and the April 2025 filing for DSMCA rates for effect July 1, 2025) that explains in detail: (1) how DSMCA-eligible costs are tracked vis-à-vis authorized budgets for specific program years and how they are reconciled with collections for the purpose of calculating under and over recovery

⁸ See Decision No. C24-0391, issued on June 10, 2024, Proceeding No. 23A-0392EG.

amounts; and (2) how the DSMCA will transition back to where the revenue requirement presented in the October filings collect DSMCA-eligible costs expected to be incurred the calendar year the DSMCA is in effect. Public Service should further consider the filing of supporting Direct Testimony for all its future electric DSMCA filings to foster continuity in collections relative to expected expenditures. We note that such continuity is inherent in the annual two-filing framework for the DSMCA as reflected in Public Service's DSMCA tariff sheets—significant changes in annual spending levels that match to already-established annual budgets are primarily and routinely addressed in the filings for new DSMCA rates effective January 1, whereas reconciliations (including expenditures in excess of budgets) are addressed separately in the filings for new DSMCA rates effective July 1. This approach allows the Commission to suspend the recovery of disputed amounts most likely embodied in tariff filings for July 1 rate changes and to have litigation on the Company's recovery of those potentially disputed yet isolated amounts.

II. ORDER

A. The Commission Orders That:

1. The tariff sheets filed by Public Service Company of Colorado ("Public Service") on April 1, 2024, with Advice Letter No. 1946-Electric to revise its Demand-Side Management Cost Adjustment ("DSMCA") to become effective July 1, 2024, are permitted to take effect by operation of law, consistent with the discussion above.

2. Public Service is directed to file Direct Testimony in its next two DSMCA filings (*i.e.*, the October 2024 filing for DSMCA rates for effect January 1, 2025 and the April 2025 filing for DSMCA rates for effect July 1, 2025) that explains in detail: (1) how DSMCA-eligible costs are tracked *vis-à-vis* authorized budgets for specific program years and reconciled with collections for the purpose of calculating under and over recovery amounts, and (2) how the DSMCA will transition

back to where the revenue requirement presented collect DSMCA-eligible costs expected to be incurred the year the DSMCA is in effect, consistent with the discussion above.

3. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails this Decision.

4. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 17, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners