

Decision No. R24-0096-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23F-0611G

THE OFFICE OF UTILITY CONSUMER ADVOCATE,

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
DENYING MOTION TO ESTABLISH PROCEDURAL
SCHEDULE AND ESTABLISHING PROCEDURAL
SCHEDULE**

Mailed Date: February 14, 2024

I. STATEMENT

A. Background

1. On December 18, 2023, the Office of the Utility Consumer Advocate (UCA) filed a Formal Complaint (Complaint) against Public Service Company of Colorado (Public Service). In the Complaint, UCA alleges that Public Service is inappropriately: (a) “applying a combined federal and state income tax gross-up to its short-term debt-only cost recovery on its stored gas inventory;” and (b) “using an incorrect short-term debt by using a proxy rate instead of its own short-term debt.”¹ UCA requests the Commission to “order Public Service to immediately cease applying a combined federal and state income tax gross-up to its short-term debt-only cost

¹ Complaint at 8.

recovery on its stored gas inventory and use its own short-term debt instead of using a proxy rate.”²

2. On December 28, 2023, the Commission issued an Order to Satisfy or Answer and an Order Setting Hearing for March 5, 2024 and served both orders on Public Service.

3. On January 17, 2024, the Commission referred the matter by minute entry to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

4. Also on January 17, 2024, Public Service filed its Answer to the Complaint (Answer).

5. On January 26, 2024, UCA filed a Motion to Establish Procedural Schedule and to Shorten Response Time.

6. On January 30, 2024, the ALJ issued Decision No. R24-0071-I that granted UCA’s Motion to Shorten Response Time to its Motion to Establish a Procedural Schedule. Decision No. R24-0071-I shortened the response time to February 2, 2024.

7. On February 2, 2024, Public Service filed its Response to the Motion to Establish a Procedural Schedule (Response).

B. Motion and Response

8. In the Motion, UCA states that time is of the essence to complete this proceeding because “[i]f it is determined that Public Service has been improperly applying the required cost of debt for gas storage inventory costs as alleged and denied by the company in this complaint, ratepayers will have been adversely affected and will continue to be adversely affected by paying

² *Id.*

higher rates.”³ Further, UCA contends that “[t]his matter is largely a question of law.”⁴ UCA concludes by requesting “that the hearing in this matter be held as scheduled with each party providing oral testimony rather than prefiling written testimony.”⁵

9. Public Service responds with four primary arguments. First, Public Service notes that UCA did not file the Complaint as an accelerated complaint in this proceeding. As a result, there is no rule-based argument that this proceeding must be expedited.⁶ Second, the argument to expedite by skipping written testimony is contrary to Commission Rule 1405(j)’s requirement that “[i]n complaint proceedings that are not accelerated, . . . all parties *shall* file and serve their testimony, including attachments, as ordered by the Commission.”⁷ According to Public Service, Rule 1405(j) “can only mean that the Commission intended that in [non-accelerated] complaint cases all parties will file and serve written Question and Answer (‘Q and A’) testimony and attachments on each other prior to the evidentiary hearing.”⁸ Third, time is not of the essence in this proceeding, as argued by UCA, as evidenced by the fact that UCA “waited 82 days [after the Commission rejected UCA’s protest of Public Service’s Fourth Quarter GCA Application] before filing the instant Complaint.”⁹ Finally, Public Service disagrees that the dispute in this proceeding is “largely a question of law,” as argued by UCA. According to Public Service,

[t]he complex factual issues likely to be addressed in the hearing include, but are not limited to, the history of Public Service’s GCA tariffs and GSIC calculations; the history of Public Service’s gas storage practices; how gas in storage is purchased and financed; whether and why a return or carrying charge on gas in storage is appropriate; the appropriate return or carrying charge on gas in storage; the correct income tax effect on the return or carrying charge on gas in storage; the proper regulatory treatment for gas storage inventory and GSIC calculations;

³ Motion at 2.

⁴ *Id.*

⁵ *Id.* at 1.

⁶ Response at 2.

⁷ Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

⁸ Response at 5-7.

⁹ *Id.* at 7.

and the way in which financing costs are recovered across base rate cases and riders.¹⁰

Public Service concludes by requesting that the hearing be continued by “approximately 90 days” and the following procedural schedule be adopted:¹¹

<u>Event</u>	<u>Deadline</u>
Direct Testimony	March 13, 2024
Answer Testimony	April 22, 2024
Rebuttal Testimony	May 13, 2024
Settlement Agreement and/or Stipulations	May 21, 2024
Settlement Testimony and/or Cross-Examination Matrix	May 29, 2024
Evidentiary Hearing	June 4-5, 2024
Statements of Position	June 26, 2024
Statutory Deadline (§ 40-6-108(4), C.R.S.)	October 9, 2024

C. Analysis

10. UCA’s Motion shall be denied. Public Service has effectively argued that written testimony as contemplated by Rule 1405(j) and discovery are appropriate in this proceeding. Employing the default rule for written testimony in Rule 1405(j) will allow the parties to develop their cases, be fully prepared for the hearing, and build a robust record.

11. However, the ALJ questions whether at least some of the “factual issues” identified by Public Service in its Response are, in fact, relevant to the issues in this proceeding. Specifically, as stated in Decision No. R23-0755 that was adopted by the Commission in Decision No. C23-0867,¹² in Proceeding No. 22AL-0046G, the Commission “instructed Public

¹⁰ *Id.* at 9.

¹¹ *Id.* at 11-12.

¹² Decision No. C23-0867 issued in Consolidated Proceeding Nos. 22AL-0348G & 23AL-0235G on December 27, 2023 at 2 (¶ 4) (“Based on our review of the Recommended Decision and the record in this Proceeding, we find good cause to modify two filing deadlines and otherwise adopt the findings and conclusions of the Recommended Decision in its entirety.”).

Service to employ its short-term cost of debt to determine the GCA rate for recovering Public Service's costs of stored gas."¹³ This was a departure from Public Service's previous practice of "earning" a "return" on its stored gas costs at a rate equal to its weighted average cost of capital. In light of the Commission's decisions in Proceeding No. 22AL-0046G, the two primary questions raised by the Complaint are whether Public Service should: (a) use its actual cost of short-term debt or a proxy short-term debt rate in calculating the GCA rate applied to the stored gas; and (b) perform a tax gross-up on the short-term debt rate. As a result, while the topics identified by Public Service may provide useful contextual information, this proceeding should not be viewed as an opportunity for Public Service to revisit decisions made by the Commission in Proceeding No. 22AL-0046G, such as whether Public Service is entitled to earn a return on stored gas and the appropriate rate of return to be applied.¹⁴ The foregoing should not be interpreted as prohibiting the parties from addressing any issue they deem relevant to the dispute in this proceeding. Instead, it is a reminder that the parties should focus their cases on the relevant issues in this proceeding, and avoid inadvertently collaterally attacking any prior Commission decisions.

12. As to the schedule proposed in the Response, the topics identified by Public Service elsewhere in its Response and excerpted above do not justify a lengthy period for discovery and researching and drafting written testimony. This is a relatively straight-forward proceeding in which the issues are well-defined and the record will consist largely of previous Commission decisions and Public Service's publicly-filed tariffs. Further, there is a public interest in reaching a resolution of this proceeding as soon as reasonably practicable. In the

¹³ Decision No. R23-0755 issued in Proceeding No. 22AL-0348G & 23AL-0235G on November 9, 2023 at 22 (¶ 59).

Complaint, UCA alleges that, as a result of Public Service allegedly improperly employing a proxy rate for its short-term cost of debt and grossing-up that rate for income taxes, Public Service over-recovered the gas storage inventories cost (GSIC) component of the GCA by approximately \$2 million from January 2023, to September 2023.¹⁵ Public Service denies this allegation in its Answer, and instead alleges that it has under-recovered the GSIC component of the GCA by approximately \$1.7 million due to other errors Public Service made in calculating the GSIC during the January 2023, to September 2023 period.¹⁶ As a result, there is a public interest in completing this proceeding as soon as reasonably practicable to stop any under- or over-collection of the GSIC. For these reasons, the schedule proposed by Public Service will not be adopted.

13. Based on the foregoing, the following schedule for this proceeding will be approved:

¹⁴ See, e.g., Response at 9 (“[t]he complex factual issues likely to be addressed in the hearing include, but are not limited to, . . . whether and why a return or carrying charge on gas in storage is appropriate; the appropriate return or carrying charge on gas in storage”).

¹⁵ Complaint at 5 (¶ 8).

¹⁶ Answer at 8-9 (¶¶ 7-8).

<u>Event</u>	<u>Deadline</u>
Amendment of Pleadings	February 21, 2024
Direct Testimony	February 27, 2024
Answer Testimony	March 19, 2024
Rebuttal Testimony	April 9, 2024
Prehearing Motions Settlement Agreement Stipulations	April 15, 2024
Responses to Prehearing Motions Settlement Testimony Cross-Examination Matrix	April 19, 2024
Evidentiary Hearing	April 24-25, 2024
Statements of Position	May 15, 2024
Statutory Deadline (§ 40-6-108(4), C.R.S.)	September 18, 2024

As to the deadline for the amendment of the pleadings, the Complaint (as noted) alleges that Public Service over-recovered the GSIC by approximately \$2 million from January 2023 to September 2023. Public Service denies this allegation and instead argues that it under-collected by approximately \$1.7 million.¹⁷ Yet, neither the Complaint nor the Answer request as relief an order that Public Service reimburse to ratepayers any over-collection, or is authorized to collect from ratepayers any under-collection. As a result, the schedule provides the parties with the opportunity to amend their pleadings to, among other things, add to their requests for relief, if they so choose and deem it appropriate. The ALJ finds and concludes that adoption of the foregoing schedule is in the public interest.

14. The method of conducting the hearing is undetermined at this time. UCA is ordered to confer with Public Service regarding whether to conduct the hearing in-person, remotely, or as a hybrid hearing. UCA is ordered to file a conferral report by February 23, 2024.

¹⁷ Complaint at 5 (¶ 8); Answer at 8-9 (¶¶ 7-8).

II. ORDER**A. It Is Ordered That:**

1. For the reasons stated above, the Motion to Establish Procedural Schedule filed on January 26, 2024 is denied.
2. The schedule identified in paragraph 13 above is adopted.
3. The Office of Utility Consumer Advocate is ordered to file the conferral report described in paragraph 14 above by February 23, 2024.
4. The hearing scheduled for March 5, 2024 is vacated and rescheduled as follows:

DATE: April 24-25, 2024

TIME: 9:00 a.m. to 5:00 p.m.

METHOD: To be determined
5. 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