

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0636G

IN THE MATTER OF ADVICE LETTER NO. 1027 – GAS FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 6 – GAS TARIFF TO UPDATE ELIGIBILITY REQUIREMENTS TO RECEIVE A CONSTRUCTION ALLOWANCE, TO REQUIRE FULL PAYMENT OF THE METER SET, AND TO ADDRESS VOLUNTARY PERMANENT TERMINATIONS OF GAS SERVICE, TO BECOME EFFECTIVE FEBRUARY 1, 2024.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
PERMANENTLY SUSPENDING TARIFF SHEETS,
APPROVING SETTLEMENT AGREEMENT WITH
MODIFICATIONS AND
REQUIRING COMPLIANCE FILING**

Mailed Date: April 19, 2024

I. STATEMENT AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision partially grants the Joint Unopposed Motion to Approve Unanimous Comprehensive Settlement Agreement and to Vacate the Remainder of the Procedural Schedule, and Request for Waiver of Response Time filed March 27, 2024 (Joint Motion); approves the Unanimous Comprehensive Settlement Agreement filed March 27, 2024 as Attachment A to the Joint Motion (Settlement Agreement or Agreement) with modifications; permanently suspends the Tariff Sheets associated with Amended Advice Letter No. 1027 filed on January 5, 2024 (Amended Advice Letter); requires a compliance tariff filing; vacates the remaining procedural schedule; and closes this Proceeding. This Decision approves the substance of Settlement

Agreement, but makes minor, non-substantive modifications to language in the proposed Tariff Sheets included in the Agreement to improve clarity and eliminate minor errors.

B. Procedural History¹

2. On December 29, 2023, Public Service Company of Colorado (Public Service or the Company) filed Advice Letter No. 1027 with associated Tariff Sheets establishing a February 1, 2024 effective date for the same.

3. At the same time, the Company also filed a “Motion [. . .] for Commission Approval of an Alternative Form of Notice” (Motion for Alternative Notice).

4. On January 5, 2024, the Company filed the Amended Advice Letter and associated Tariff Sheets, which maintains the February 1, 2024 effective date for the same.

5. On January 11, 2024, the Commission granted the Motion for Alternative Notice.² That same day, the Company filed two Affidavits, one attesting to the alternative form of notice that it provided, and the other affirming that alternative notice is complete.

6. On January 26, 2024, the Commission suspended the effective date of the Tariff Sheets filed with the Amended Advice Letter by 120 days to May 31, 2024; set the Tariff Sheets for a hearing; waived the December 31, 2023 deadline in Rule 4210(d) of the Commission’s Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4; established February 23, 2024 as the intervention deadline; and referred this matter to an administrative law judge (ALJ) for disposition.³

7. On March 8, 2024, the ALJ further suspended effective date of the Tariff Sheets associated with the Amended Advice Letter to October 8, 2024, as permitted by § 40-6-111(1)(b),

¹ Only the procedural history necessary to understand this Decision is included.

² Decision No. C24-0028-I (mailed January 11, 2024).

³ Decision No. C24-0062 at 2-6 and 9 (mailed January 26, 2024).

C.R.S.; addressed interventions; with the parties' input, scheduled a remote evidentiary hearing for June 5 and 6, 2024; and established a procedural schedule relating to that hearing.⁴

8. In addition to Public Service, the following entities are parties to this Proceeding: the Colorado Office of the Utility Consumer Advocate (UCA); Colorado Public Utilities Trial Staff (Staff); and Western Resource Advocates (WRA).⁵

9. On March 27, 2024, the Company filed the Joint Motion and Settlement Agreement to which all parties are signatories.

II. DISCUSSION AND FINDINGS

A. Relevant Law

10. The Commission has broad constitutional and statutory authority to regulate public utilities and has jurisdiction to enforce statutes affecting public utilities.⁶ Under § 40-3.2-104.3(1)(c) and (2)(c), C.R.S., gas utilities over which the Commission has authority to regulate rates and charges must file an updated tariff to remove any incentives for an applicant to establish gas service to a property by December 31, 2023 with the Commission. Since § 40-3.2-104.3, C.R.S., impacts public utilities, the Commission has specific authority and jurisdiction over tariffs filed per § 40-3.2-104.3, C.R.S.⁷

11. Under § 40-3.2-104.3(2)(d), C.R.S., a utility may exempt from the updated tariff required in § 40-3.2-104.3(2)(c) C.R.S., any applicant for natural gas service who: has already submitted an application that has been approved or is pending as of August 7, 2023; can demonstrate or attest that the applicant has submitted a permit application to the local government with permitting authority and that such application is either approved or pending as of August 7,

⁴ Decision No. R24-0153-I at 3-14 (mailed March 8, 2024).

⁵ *Id.* at 9.

⁶ Colo. Const. art. XXV; and §§ 40-1-103(1)(a)(I); 40-3-102; 40-7-101, C.R.S.

⁷ *See* Colo. Const. art. XXV; and §§ 40-1-103(1)(a)(I); 40-3-102; 40-7-101, C.R.S.

2023; or can demonstrate or attest that the applicant has submitted to a local government a site development plan or plat that is either approved or pending as of August 7, 2023 (except that an applicant that has submitted a site development plan or plat for which a permit application to the local government has not been approved on or before December 31, 2024 is not exempt).

12. In addition, § 40-3.2-104.5(1), C.R.S., prohibits a gas utility from penalizing or charging a fee to a customer that voluntarily terminates gas service; requires that once a customer has voluntarily terminated gas service, the utility may not continue to charge the customer any fees; and states that any costs associated with such service termination be considered part of general distribution system investments, which are eligible for cost recovery. Since § 40-3.2-104.5, C.R.S., impacts public utilities, the Commission has specific jurisdiction and authority over tariffs filed per § 40-3.2-104.5, C.R.S.⁸

13. When exercising any power granted to it, the Commission must give the public interest first and paramount consideration.⁹

14. The Commission has discretion to determine whether to hold a hearing on a tariff filing; this also means that the Commission may decide not to hold a hearing on a tariff filing.¹⁰

15. As the proponents of an order, parties to the Settlement Agreement bear the burden of proof by a preponderance of the evidence that the Agreement should be approved.¹¹ This standard requires the fact finder to determine whether the existence of a contested fact is more probable than its nonexistence.¹² The preponderance of the evidence standard requires substantial

⁸ See Colo. Const. art. XXV; and §§ 40-1-103(1)(a)(I); 40-3-102; 40-7-101, C.R.S.

⁹ § 40-3-101(1), C.R.S.; *Pub. Serv. Co. of Colo. v. Pub. Utilis. Comm'n*, 350 P.2d 543, 549 (Colo. 1960), *cert. denied*, 364 U.S. 820 (1960).

¹⁰ *Colorado Office of Consumer Counsel v. Pub. Utilis. Comm'n*, 752 P.2d 1049, 1053-54 (Colo. 1988). See § 40-6-111(1)(a), C.R.S.; Rule 1305(c), 4 CCR 723-1.

¹¹ § 24-4-105(7) C.R.S.; Rule 1500, 4 CCR 723-1.

¹² *Swain v. Colorado Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

evidence, which is such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion.¹³

16. The Commission encourages settlement of contested proceedings.¹⁴

17. The ALJ assesses the Settlement Agreement and issues in this Proceeding with the above in mind.

B. Commission Jurisdiction and Need for Hearing

18. The Company filed the Amended Advice Letter to remove language in its Tariff Sheets that include construction allowances for new main and service line installations as required by § 40-3.2-104.3(2)(c), C.R.S.¹⁵ In addition, as discussed below, the Settlement Agreement also seeks to make changes to the Company's relevant Tariff Sheets to comply with § 40-3.2-104.5(1), C.R.S. Based on this, and the record and the authorities discussed above, the ALJ concludes that the Commission has specific jurisdiction over this matter, including whether to approve the Settlement Agreement.¹⁶

19. All the parties to this Proceeding, (Public Service, Staff, the UCA, and WRA), entered into the Settlement Agreement, which is intended to be a comprehensive resolution of all issues in this Proceeding.¹⁷ Since all parties to this Proceeding are signatories to the Settlement Agreement, it is unopposed. The parties agree that the Agreement should be approved without a hearing.¹⁸ The ALJ has reviewed the Settlement Agreement and has not identified any issues that require a hearing. Based on this, the fact that the Agreement is unanimous and comprehensive, and

¹³ *City of Boulder v. Pub. Utilis. Comm'n.*, 996 P.2d 1270, 1278 (Colo. 2000), quoting *CF&I Steel, L.P. v. Pub. Utilis. Comm'n.*, 949 P.2d 577, 585 (Colo. 1997).

¹⁴ Rule 1408(a), 4 CCR 723-1.

¹⁵ Amended Advice Letter at 1; Settlement Agreement at 1.

¹⁶ Because the Company seeks to implement tariff changes required by two statutes directly impacting it, that is, §§ 40-3.2-104.3 and 40-3.2-104.5(1), C.R.S., the Commission has specific jurisdiction per Colo. Const. art. XXV, and §§ 40-1-103(1)(a)(I); 40-3-102; 40-7-101, C.R.S.

¹⁷ Settlement Agreement at 1.

¹⁸ Joint Motion at 5.

because the parties do not request a hearing and one is not otherwise required, the ALJ finds that a hearing on the Settlement Agreement is not necessary. For these reasons, the ALJ will decide this matter based on the record without a hearing.¹⁹

C. Settlement Agreement²⁰

20. As noted, the Settlement Agreement is unanimous and is intended to comprehensively resolve the issues in this Proceeding.²¹ The Agreement includes the proposed Tariff Sheets reflecting the Agreement's suggested tariff changes.²² The parties intend that the changes in the proposed Tariff Sheets to eliminate incentives to establishing gas service per § 40-3.2-104.3, C.R.S.; update language to include grandfathering provisions in § 40-3.2-104.3(2)(d), C.R.S.; and clarify that the Company will not charge customers for voluntarily terminating gas service per § 40.3.2-104.5, C.R.S.²³

21. To accomplish this, the proposed Tariff Sheets add language to the definition of "Construction Allowance" and the Distribution Extension Policy clarifying that only those who meet the conditions in § 40-3.2-104.3(2)(d), C.R.S., are eligible for a construction allowance; and language clarifying that when a customer requests to voluntarily terminate gas service and disconnect from the distribution system without the intent to resume service, the Company will do so at no charge to the customer (unless otherwise permitted by the Commission), consistent with § 40-3.2-104.5, C.R.S.²⁴

¹⁹ *Colorado Office of Consumer Counsel*, 752 P.2d at 1053-54. See § 40-6-111(1)(a), C.R.S.; Rule 1305(c), 4 CCR 723-1.

²⁰ The Agreement includes numerous general provisions common in settlement agreements before the Commission. Settlement Agreement at 3-6. This Decision does not discuss those provisions, as unnecessary.

²¹ Settlement Agreement at 1 and 3.

²² *Id.* at 2 and 7-14. The proposed Tariff Sheets were filed as a single document with the Settlement Agreement, not as a separate document. As such, when discussing the proposed Tariff Sheets, this Decision cites to the relevant page number in the Settlement Agreement.

²³ *Id.* at 2.

²⁴ *Id.* at 8, 10 and 13.

22. By limiting construction allowances only to those applicants who meet the grandfathering requirements under § 40-3.2-104.3(2)(d), C.R.S., the proposed Tariff Sheets effectively ensure that applicants who fail to meet the grandfathering provisions cannot receive an incentive for establishing new gas service. The result is a tariff that complies with § 40-3.2-104.3(2)(a) and (d), C.R.S. Similarly, by using language explicitly stating that the Company will disconnect customers from its distribution system at no charge when customers voluntarily request to be disconnected (without the intent to resume service), the proposed Tariff Sheets also comply with § 40-3.2-104.5(1), C.R.S.

23. That said, minor changes to the proposed Tariff Sheets are necessary to improve clarity, particularly relating to new permanent service. Specifically, on Sheet No. R72, the following changes to the second paragraph under the header “Permanent Service,” in the proposed Amended Tariff will provide appropriate clarity:

~~For gas service of a permanent character, the Company will provide a Construction Allowance for necessary On Site Distribution Extension, Residential Service Lateral Facilities based on the gross embedded distribution plant investment per Customer or per Dekatherm (Dth). The remainder of the Construction Cost shall be paid by the Applicant as a Construction Payment. The Construction Allowances, if available, and Construction Costs and Credits, if available, are listed on the sheets entitled Construction Allowance by Customer Class and Rate Schedule and Standard Construction Costs and Credits for each of the various classes of service.~~²⁵

24. The above changes confirm that generally, a customer requesting new permanent gas service will be responsible for the costs of the same, consistent with § 40-3.2-104.3(2)(a), C.R.S. This also simplifies the tariff so that a new applicant for service will know from looking at this language that the applicant will be responsible for the costs of construction to add new

²⁵ Deleted language is stricken through and added language is underlined, as compared to the proposed Tariff Sheets. See Settlement Agreement at 11.

permanent service without having to research the Construction Allowance language in the tariff, which outlines the narrow exceptions to this (*i.e.*, the grandfathering provisions), consistent with § 40-3.2-104.3(2)(d), C.R.S.

25. In addition, Sheet Nos. R64 and R87 include what appears to be the same typographical errors that should be corrected as follows:

A Construction Allowance is only available in the instance when the Applicant can demonstrate or attest that the Applicant has submitted a permit application to the local governmental entity having permitting jurisdiction and ~~with permitting~~ authority in the location of the property [. . .].²⁶

26. The above minor modifications will improve clarity and readability.

27. For the reasons discussed, the Company will be required to make the changes outlined in ¶¶ 23 and 25 above in its required tariff filing.

28. The Agreement requires the Company to implement the tariff changes relating to § 40-3.2-104.5, C.R.S., (service termination and disconnection) in a manner that avoids burdensome requirements for customers seeking to terminate natural gas service, which includes training relevant staff and updating its forms to streamline disconnection.²⁷

29. In the Agreement, the parties acknowledge that the proposed Tariff Sheets do not fully address the line extension policy requirements in Rule 4210, 4 CCR 723-4, as discussed in Decision No. C24-0062, and that the ongoing requirements in that Rule may be addressed in a future base rate case or other appropriate filing.²⁸ The parties agree that the Agreement serves the

²⁶ Deleted language is stricken through and added language is underlined, as compared to the proposed Tariff Sheets. The above-referenced pages of the proposed Tariff Sheets include identical language (quoted above), including the apparent typographical errors. See Settlement Agreement at 10 (Sheet No. R64) and 13 (Sheet No. R87).

²⁷ *Id.* at 2.

²⁸ *Id.* at 3.

public interest; is consistent with the General Assembly's statutory intent and requirements; and results in avoided litigation and judicial economy.²⁹

30. The Agreement provides that the tariff sheets associated with the Amended Advice Letter should be permanently suspended, and that no later than five calendar days after a final decision approving the Agreement, the Company will file a new compliance advice letter to implement the proposed Tariff Sheets on not less than two business days' notice.³⁰

31. The ALJ finds that by filing the Advice Letter and associated tariff sheets before the end of 2023, the Company complied with the requirement in § 40-3.2-104.3(2)(c), C.R.S., to file tariff sheets by December 31, 2023 that remove incentives to establish new service to a property. With the changes outlined above, the ALJ finds that the Settlement Agreement and resulting modified tariff sheets comply with the relevant statutory provisions and are consistent with the public interest.

D. Conclusions

32. For the reasons and authorities discussed, the ALJ finds that the preponderance of the evidence establishes that the Settlement Agreement reflects a just and reasonable compromise between the parties to resolve all issues that have been or could have been raised here; is in the public interest; and is just and reasonable and not discriminatory. The ALJ concludes that the Agreement will result in nondiscriminatory conditions and terms of service for the Company's customers. For all the reasons discussed, the Settlement Agreement should be approved as modified herein.

²⁹ *Id.*

³⁰ *Id.*

33. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this Proceeding along with this written recommended decision and recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders that:

1. The Joint Unopposed Motion to Approve Unanimous Comprehensive Settlement Agreement and to Vacate the Remainder of the Procedural Schedule, and Request for Waiver of Response Time filed March 27, 2024 (Joint Motion) is partially granted consistent with the above discussion.

2. Consistent with the above discussion, the Unanimous Comprehensive Settlement Agreement filed March 27, 2024 as Attachment A to the Joint Motion (Settlement Agreement) is approved with modifications. The Settlement Agreement and proposed Tariff Sheets are included with this Decision as Appendix A.

3. The Tariff Sheets associated with Amended Advice Letter No. 1027 filed on January 5, 2024 are permanently suspended and may not be further amended.

4. No more than five business days after this Recommended Decision becomes a Commission Decision, if that is the case, Public Service Company of Colorado (Public Service) must file a compliance advice letter and tariff sheets in substantially the same form as the Tariff Sheets included with the Settlement Agreement with the modifications discussed herein, on not less than two business days' notice. The compliance filings must be made in a new advice letter proceeding and comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire

notice period must expire before the effective date. The advice letter and tariff sheets must comply in all substantive respects to this Decision to be filed as a compliance filing on shortened notice.

5. The remaining procedural schedule in this Proceeding, including the evidentiary hearing, is vacated.

6. Proceeding No. 23AL-0636G is closed.

7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

8. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

9. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

10. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

11. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director