

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0106W

IN THE MATTER OF THE APPLICATION OF PAPASON LLC D/B/A BAXTER WATER AND SERVICES REQUESTING APPROVAL FOR SIMPLIFIED REGULATORY TREATMENT AND PARTICIPATION IN THE RESOURCE COST PASS-THROUGH OPTION.

**RECOMMENDED DECISION
APPROVING UNANIMOUS COMPREHENSIVE
SETTLEMENT AGREEMENT, GRANTING
APPLICATION, AS MODIFIED BY SETTLEMENT
AGREEMENT, AND CLOSING PROCEEDING**

Issued Date: November 21, 2024

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A. It is Ordered That:12

I. STATEMENT

A. Background

1. On March 1, 2024, Papason LLC, doing business as Baxter Water & Services (“Baxter” or “Applicant”) filed with the Commission its Application for Simplified Regulatory Treatment and Participation in the Resource Cost Pass-Through Option (“Application”). The Application was filed pursuant to with the Unanimous Comprehensive Settlement Agreement entered between Baxter and the Colorado Public Utilities Commission’s (“Commission”) Trial Staff (“Staff”) and Decision No. C24-0026, filed in Proceeding No. 23A-0128W. The filing of the Application commenced Proceeding No. 24A-0106W.

2. On March 15, 2024, the Colorado Public Utilities Commission (“Commission”) issued its Notice of Application Filed, notifying the public of the Application.

3. On April 19, 2024, Staff timely noticed its intervention of right and requested a hearing in this Proceeding.

4. On May 1, 2024, the Commission deemed the Application complete and referred this matter to an Administrative Law Judge (“ALJ”) by minute entry.

5. By Decision No. R24-0391-I, issued June 6, 2024, the ALJ, among other things, adopted a procedural schedule and scheduled an evidentiary hearing in this matter for September 13, 2024. Pursuant to Decision No. R24-0391-I, the deadline for the filing of a Settlement Agreement was August 16, 2024.

6. By Decision No. R24-0551-I, issued July 31, 2024, the ALJ, among other things, vacated the evidentiary hearing in this Proceeding and all procedural deadlines established by Decision No. R24-0391-I, except the deadline for the filing of a Settlement Agreement.

7. On August 16, 2024, the parties filed their Joint Unopposed Motion to Schedule a Public Comment Hearing, Approve Unanimous Comprehensive Settlement Agreement, and Waive Response Time (“Joint Motion”). With the Joint Motion, the Parties filed their Unanimous Comprehensive Settlement Agreement (“Settlement Agreement”).

8. By Decision No. R24-0627-I, issued August 29, 2024, the undersigned ALJ scheduled an evidentiary hearing in this matter and stated that “[t]he remaining relief requested in the [Joint Motion] will be addressed by a separate Decision.”

9. On September 11, and October 4, 2024, two written public comments were submitted in this Proceeding.

10. On October 8, 2024, the undersigned ALJ held a public comment hearing regarding the terms of the Settlement Agreement. Two members of the public submitted oral public comments during the public comment hearing.

11. Applicant and Staff are the only parties in this Proceeding.

II. SETTLEMENT AGREEMENT

12. The Settlement Agreement, which is attached to this Recommended Decision as Appendix A, is intended to resolve all issues raised by the Settling Parties in this Proceeding with respect to the Application.¹ The Settlement Agreement is comprised of seven main sections: Base Rate Charges and Revenue Requirement; Other Tariff Changes; Compliance Filing;

¹ Settlement Agreement at pp. 1, 7.

Customer Notice; Public Comment Hearing; Reporting; and General Provisions.²

The following is intended as a summary of some of the main terms of the Settlement Agreement, rather than full recitation of the same.

a. Base Rate Charges and Revenue Requirement

13. Baxter and Staff (“the Settling Parties”) “agree that Baxter’s current rates, which have not been adjusted for approximately 20 years, are too low to cover the cost of providing safe and reliable service to the utility’s customers.”³ Based on Staff’s determination that of the \$690,816 in annual expenses sought by Baxter in its Application, \$217,504 should not be recovered from ratepayers, Staff and Baxter have reached a compromise whereby “the Settling Parties... agree... to exclude non-recoverable costs, [and] costs reclassified as capital expenditures will be amortized over the next 20 years.”⁴ The parties agree that this compromise will allow Baxter to “continue providing service while pursuing grants and loans to improve and repair its outdated system.”⁵

14. To give Baxter’s customers time to adjust to the increase of their water utility bills; while allowing Baxter to continue its operations, the Settling Parties agree to the following phase-in schedule:⁶

1. New Base Rate: The Settling Parties agree that Baxter should be permitted to raise its base rate from the current fixed charge of \$58.75/month to \$112.67/month. This new rate will be billed for all customers as a flat monthly fee, as was done with the previous rates.

2. Phase-In Period: The rate increase will be phased in on a quarterly basis over three quarters. The first increase will be \$17.92 and will be phased into

² *Id.* At p. 2-9.

³ *Id.* At p. 2.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

effect as soon as feasible after final approval of the Settlement Agreement by the Commission... The next increase will be \$18.00, and will take effect three billing cycles after the first increase. The final increase will be \$18.00, and will take effect three billing cycles after the second increase. These rate changes lead to a final monthly bill of \$112.67.

3. Revenue Requirement: These rates reflect an annual revenue requirement of \$248,796. The revenue requirement includes \$211,794 in operation and maintenance expenses with an eight percent operating margin of \$16,943 annually. The revenue requirement also includes annual recovery of \$20,058 in capital project recovery. These details are discussed further in the spreadsheet included as “Attachment A” to this Settlement Agreement.⁷

b. Other Tariff Changes

15. The Settling parties further agree to the following tariff changes:

- The account transfer fee will be increased from \$32.00 to \$35.00.
- The fee charged for returned checks will increase from \$20.00 to \$40.00 (which will cover the \$35.00 fee charged by Baxter’s bank and \$5.00 in administrative costs per returned check).
- The non-business hours turn on/off fee will be removed from the Tariff.
- The Water Service Shut Off rules in Paragraph 14 of Baxter’s Rules and Regulations will be changed to state that Baxter will not discontinue service to any customer unless the conditions for discontinuation set forth in the Commission’s Rules are met, and that the utility will provide customers with written notice at least 15 days before discontinuing service based on past-due bills, as set forth in Commission Rule 5408.
- The Water Curtailment Program in Paragraph 15 of Baxter’s Rules and Regulations will be updated to clarify that state agencies are responsible for assessing drought conditions.⁸

c. Compliance Filing

16. Baxter agrees to make a compliance filing in this Proceeding (“Compliance Filing”) as soon as practicable after final Commission approval of the Settlement to implement the rate

⁷ *Id.* At p. 2-3.

⁸ *Id.* At p. 3-4.

increases and modifications to its tariff as outlined in the Settlement Agreement. The Compliance Filing will include an Advice Letter stating that the filing is being made to implement Tariffs approved by the Commission in this Proceeding and will include the tariff sheets that are attached to the Settlement Agreement as Attachment B⁹, with the effective date of those based on the date on which the Commission approves the Settlement Agreement.

d. Customer Notice

17. The Settling Parties agreed that, within seven days of the filing of the Settlement Agreement, Baxter would provide alternative notice to its customers by publishing the document attached to the Settlement Agreement as Attachment C (“Attachment C to the Settlement Agreement”) in the Pueblo Chieftain, a newspaper of general circulation in Baxter’s service area.¹⁰ The Settling Parties also agree that Baxter would provide 30 days’ notice to its customers of the rate increases contemplated by this Settlement Agreement, which would commence on the date of publication of Attachment C to the Settlement Agreement in the Pueblo Chieftain.¹¹ Baxter would also mail a copy of Attachment C to the Settlement Agreement to each of its customers within seven days of the filing of this Agreement.¹² Finally, the Settling Parties agree that Baxter would post the proposed tariffs included as Attachment B to the Settlement Agreement at Baxter’s wellhouse in a place where these documents can be inspected by its customers during regular business hours throughout the 30-day notice period.¹³

⁹ See Appendix B to this Recommended Decision.

¹⁰ Settlement Agreement at p. 5.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

e. Public Comment Hearing

18. The Settling Parties agree that the ALJ should hold a public comment hearing approximately three weeks after the filing of this Settlement Agreement to allow the public to the opportunity to provide feedback on Baxter's proposed rate increases and other provisions of the Settlement Agreement.¹⁴ Baxter agreed that once the public comment hearing was added to the Commission's calendar, Baxter would mail a notice to its customers informing them of the date and time of the hearing.¹⁵

f. Reporting

19. Baxter agrees to file quarterly reports with the Commission within 45 days of end of each calendar quarter.¹⁶ The quarterly reports shall include a detailed discussion of the following topics:

1. Capital Improvements: Baxter's quarterly reports shall list all capital improvement projects either proposed or currently underway, and provide (1) a project description and timeline, (2) regulatory authority requiring improvement if applicable or operational risk factors behind improvements, (3) project costs to date and costs remaining, (3) estimated asset in-service date and phase schedule (if any), (4) banking institution reports including loan documents (if any), and (5) compatibility with any other water systems that are geographically contiguous with Baxter's service territory.

2. Grant and Loan Applications: Baxter's quarterly reports shall include a list of all grant and loan opportunities pursued by the utility in the previous calendar quarter (including grants from state agencies for system repairs or water quality compliance), and the status or outcome of such applications.

3. Ownership status: Baxter's quarterly reports shall list all beneficial owners of the utility, and provide details on any proposed changes in corporate structure or ownership, including any proposed conversion to special district or non-profit status.¹⁷

¹⁴ *Id.* at p. 6.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at pp. 6-7.

g. General Provisions

20. “The Settling Parties agree the provisions of this Settlement Agreement, as well as the negotiation process undertaken to reach this Settlement Agreement, are just, reasonable, and consistent with and not contrary to the public interest and should be approved and authorized by the Commission.”

III. LEGAL STANDARDS, FINDINGS OF FACT, DISCUSSION AND CONCLUSIONS

A. Burden of Proof

21. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon “the proponent of an order.”¹⁸ The Settling Parties filed the Joint Motion and, as a result, bear the burden of proof.¹⁹ The Settling Parties must establish by a preponderance of the evidence that the Settlement Agreement is just, reasonable, and in the public interest. The Commission is not bound by the parties’ agreement and has an independent duty to determine matters that are within the public interest.²⁰

B. Modified Procedure

22. The Application, as modified by the Settlement Agreement, is uncontested. The Settlement Agreement was executed by each of the Settling Parties and is otherwise unopposed, as is the Joint Motion. In addition, the parties agree that an evidentiary hearing is unnecessary.²¹ Finally, the Application and Settlement Agreement are supported by sworn testimony and attachments that verify sufficient facts to support the Application and Settlement Agreement. Accordingly, pursuant to § 40-6-109(5), C.R.S. and Rule 1403 of the Rules of Practice

¹⁸ Section 24-4-105(7), C.R.S.

¹⁹ Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; and Rule 1500 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1.

²⁰ See *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

²¹ Joint Motion at ¶ 20.

and Procedure, 4 CCR 723-1, the Application, as modified by the Settlement Agreement, will be considered under the modified procedure, without a formal hearing.

C. Findings of Fact

23. Baxter is a Colorado limited liability company in good standing with a physical address located at 225 Circle Ln., Pueblo, CO 81006 and a mailing address of P.O. Box 7565, Pueblo West, Colorado 81007.

24. Baxter is a utility within the definition of § 40-1-103(1)(a), C.R.S., and Rule 5001(j), 4 CCR 723-5.²²

25. Baxter and Staff are the only other party to this Proceeding.

26. Baxter and Staff have reached a comprehensive settlement agreement as to all issues that were raised by the parties in this Proceeding, the terms and conditions the parties' agreement are set forth in the Settlement Agreement.²³

27. The Settlement Agreement addresses: Baxter's new proposed base rate charges and revenue requirements; other proposed changes to Baxter's tariff; Baxter's commitment to submit a compliance filing; Baxter's commitment to provide its customers with notice of its proposed rate charges and revenue requirements and other proposed changes to Baxter's tariff; the parties' request that a public comment hearing be held in this Proceeding; Baxter's commitment to provide the commission with certain reports, and other general provisions.²⁴

D. Discussion and Conclusions

28. The undersigned ALJ reviewed the full administrative and evidentiary record, including the parties' settlement testimony and the terms and conditions of the Settlement

²² See generally, Application.

²³ Joint Motion at pp. 2-9.

²⁴ *Id.* At p. 2-9.

Agreement. The ALJ has duly considered the positions of parties and public in this matter and weighed the evidence presented.

29. The Settlement Agreement and tariff sheets that were attached to the Settlement Agreement as Attachment B, are incorporated as Appendices A and B, respectively, to this Decision.

30. The Commission encourages settlement of contested proceedings. However, the Commission has to balance the longstanding policy of encouraging settlements in contested Proceedings and the Commission's independent duty to determine matters that are within the public interest.

31. The ALJ finds and concludes that the compliance filing provisions set forth in § III on pp. 4-5 of the Settlement Agreement are generally reasonable and not contrary to the public interest. However, consistent with the Commission's practice, and for purposes of administrative efficiency, the compliance filing set forth in § III on pp. 4-5 of the Settlement Agreement shall be filed as a *new* Advice Letter Proceeding (and not in this Proceeding as set forth in the Settlement Agreement), as ordered below.

32. The parties, as well as the public commenters who submitted a public comment in this Proceeding,²⁵ acknowledge that the rate increases contemplated by the Settlement Agreement are significant. However, the ALJ notes that Baxter's (and its predecessor's) rates have not been raised in approximately 23 years;²⁶ of the \$690,816 in yearly expenses sought by Baxter in the

²⁵ See, e.g., the written public comments of Uonda Leggitt, dated August 31, 2024, filed September 11, 2024 and Brett Moreland, dated and filed on October 4, 2024.

²⁶ See Application at p. 16. The cumulative inflationary changes, alone, between July 1, 2000, when Baxter's predecessor's rates were last increased, and March 1 2024, the date of the filing of the Application (which Baxter does not seek to recover through the Application and/or Settlement Agreement) would have accounted for approximately 95 percent of the rate increases contemplated by the Settlement Agreement. *Compare* Baxter's current monthly rate, adjusted for inflation, \$107.34 *with* the monthly rate ultimately sought by Baxter through the Application, as modified by the Settlement Agreement, \$112.67. Application at pp. 15-16 and Settlement Agreement at p. 3.

Application \$217,504 would not be recovered from ratepayers;²⁷ and Baxter's increased rates would allow Baxter to continue providing service while pursuing grants and loans to improve and repair Baxter's outdated system. Based on the foregoing and the entire record in this Proceeding, the ALJ finds that the rate increases contemplated by the Settlement Agreement are reasonable and not contrary to the public interest.²⁸

33. With respect to any concerns by the public that the water provided by Baxter to its customers is unsafe or of substantially inferior quality, the record is devoid of evidence suggesting that this is the case. The ALJ notes that Baxter has an independent duty to comply with State and Federal regulations related to water quality. The ALJ further notes that the Settlement Agreement requires Baxter to include with its quarterly reports to the Commission a list of all grant and loan opportunities pursued by Baxter, including grants from state agencies for water quality compliance. Lastly, any concerns by the public with respect to the chlorine content in the water supplied by Baxter can be reasonably addressed by Baxter's customers on an individual basis.²⁹

34. With respect to any requests by the public that the rate increases contemplated by the Settlement Agreement should be accomplished based on volumetric charges,³⁰ the ALJ finds and concludes that under the circumstances of the case at hand, such request would not be feasible and/or not in the public interest. First, no water meters are currently installed on Baxter's customers' properties.³¹ The installation of individual water meters on the property of each of Baxter's customers would entail a substantial expense. Second, because future water usage levels

²⁷ *I.e.*, such expenses would have to be borne by Baxter and not its customers.

²⁸ The ALJ further notes that Baxter's customers may seek water assistance based on need from state- and/or federally-funded programs, such as Colorado's Low Income Household Water Assistance Program.

²⁹ The ALJ notes that the chlorine content in utility-supplied water can be substantially, if not completely, mitigated by the installation of a chlorine filter, which is widely available for personal consumption.

³⁰ *See, e.g.*, the written public comments of Uonda Leggett, dated August 31, 2024, filed September 11, 2024.

³¹ *See* Application at p. 14.

have no bearing on the repair of the already-outdated Baxter's water delivery system, it would be contrary to the public interest for Baxter to rely on future metered rates for its revenue requirements.³²

35. The ALJ finds that the parties have established by a preponderance of the evidence that the Settlement Agreement is just, reasonable, in the public interest, and should be approved by the Commission. The Settlement Agreement proposes a fair and timely resolution of all contested issues and substantial evidence shows that its terms will ultimately benefit Baxter and its customers.

36. 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.

IV. ORDER

A. It is Ordered That:

1. Except as ordered below, the Unanimous Comprehensive Settlement Agreement ("Settlement Agreement") filed by the parties on August 16, 2024 is approved, consistent with the discussion above. The Settlement Agreement is Attached to this Decision as Appendix A.

2. Papason LLC, doing business as Baxter Water & Service's ("Baxter") Application for Simplified Regulatory Treatment and Participation in the Resource Cost Pass-Through Option ("Application"), filed March 1, 2024, as modified by the Settlement Agreement, is granted, consistent with the discussion above.

³² See the "Revenue Requirement" tab of the spreadsheet attached as Attachment A to the Settlement Agreement.

3. Citing this Decision as the applicable authority, within fourteen days of this decision becoming a Commission Decision, if at all, on not less than two business days' notice, Baxter shall make a compliance filing ("Compliance Filing"), consistent with § III on pp. 4-5 of Appendix A, except that the Compliance Filing shall be filed as a *new* Advice Letter Proceeding (rather than in this Proceeding, as set forth in Appendix A). The Compliance Filing shall comply with all applicable rules. In calculating the effective date of the tariff to be included within the Compliance Filing, the date the Compliance Filing is received at the Commission shall not be included in the notice period and the entire notice period must expire prior to the effective date. The Compliance Filing shall include the tariff sheets that were attached to the Settlement Agreement as Attachment B, and are attached and incorporated herein as Appendix B ("Tariff Sheets"), except that the Tariff Sheets shall include the appropriate effective date of Baxter's tariffs authorized by this decision.

4. Except as stated herein, Baxter shall comply with all the terms of, and make all the filings required by, the Settlement Agreement and this Recommended Decision.

5. Proceeding No. 24A-0106W is closed.

6. 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.

7. 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.

a) 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.

b) 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.

8. 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)



ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge