Decision No. R14-0026

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13AL-0816E

IN THE MATTER OF ADVICE LETTER NO. 1644 FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO ADD LANGUAGE TO THE ELECTRIC COMMODITY ADJUSTMENT ("ECA") TARIFF IN THE COMPANY'S COLORADO PUC NO. 7 TO BECOME EFFECTIVE AUGUST 15, 2013.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE ROBERT I. GARVEY PERMANENTLY SUSPENDING TARIFFS AND REQUIRING THE FILING OF NEW TARIFFS

Mailed Date: January 9, 2014

TABLE OF CONTENTS

I. STATEMENT

1. On July 15, 2013, Public Service Company of Colorado (Public Service or Company) filed Advice Letter No. 1644.

2. By Decision No. C13-1005, issued August 14, 2013, the effective date of the tariff was suspended and the matter was referred to an administrative law judge (ALJ) for disposition.

3. On August 21, 2013, Colorado Office of Consumer Counsel (OCC) filed its Notice of Intervention of Right, Entry of Appearance, and Request for Hearing.

4. On September 10, 2013, Western Resources Advocates (WRA) filed its Leave to Intervene. WRA represented that it possessed the requisite interest to intervene in this matter, as it is a regional environmental law and policy center. WRA indicated that its headquarters is in Colorado and it has members and supporters who are also Public Service's ratepayers. WRA stated that it was interested in the outcome of this proceeding because it will directly and substantially affect its interests in promoting environmentally and economically sound energy resources for its members.

5. On September 11, 2013, Climax Molybdenum Company (Climax) and CF&I Steel, doing business as Evraz Rocky Mountain Steel (Evraz) filed their Petition to Intervene. Climax and Evraz stated they were interested in the issues that will be addressed in this proceeding because these issues may substantially affect their tangible interests.

6. On September 12, 2013, Staff of the Colorado Public Utilities Commission (Staff) filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1403(b), and Request for Hearing. As required by Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a) of the Commission's Rules of Practice and Procedure, Staff identified the Trial Advocacy (litigation) Staff and the Advisory Staff.

7. By Interim Decision No. R13-1065-I, issued August 27, 2013, a prehearing conference was scheduled for September 17, 2013.

8. At the prehearing conference, the Parties presented a procedural schedule and requested an evidentiary hearing be scheduled for December 10 and 11, 2013.

9. At the designated time and place the evidentiary hearing was held. The ALJ heard testimony from Public Service witnesses Robin Kittle,[1] Dolores Basquez,[2] Christopher Haworth,[3] Staff witness William Dalton,[4] and OCC witness Ronald Fernandez.[5]

10. Hearing Exhibits No. 1 through No. 10 were offered and admitted into evidence. Administrative Notice was taken of Commission Decision No. C06-1379 issued December 1, 2006 in Proceeding No. 06S-234E at paragraph 66, Commission Rules 3400 and 3402 of the Rules Regulating Electric Utilities 4 CCR 723-3, and portions of the testimony and exhibits[6] of Mr. George Tyson in Proceeding No. 12AL-1268G.

11. At the conclusion of the hearing, the evidentiary record was closed. The ALJ took the matter under advisement.

12. On December 23, 2013, the parties filed their Post Hearing Statement of Position.

II. FINDINGS OF FACT

13. Public Service's costs of acquiring eligible energy resources for compliance with the Renewable Energy Standard (RES) established in § 40-2-124, C.R.S., are to be recovered from customers through two adjustment clauses: the Renewable Energy Standard Adjustment (RESA) and the Electric Commodity Adjustment (ECA).

---

[1] Ms. Kittle is the Director of Regulatory Administration for Public Service. Her written direct testimony and exhibits are Hearing Exhibit No. 1, and her rebuttal testimony and exhibits are Hearing Exhibit No. 2.

[2] Ms Basquez is a Principal Pricing Analyst in the Pricing and Planning Department for Public Service. Her written direct testimony and exhibits are Hearing Exhibit No.3.

[3] Mr. Hayworth is a Senior Director- Utility Accounting for Public Service. His rebuttal testimony and exhibits are Hearing Exhibit 4.

[4] Mr. Dalton is a Professional Engineer employed by the Colorado Public Utilities Commission. His answer testimony and exhibits are Hearing Exhibit No. 5.

[5] Mr. Fernandez is a Financial Analyst with the OCC. His Answer testimony and exhibits are Hearing Exhibit No. 6.

[6] The portions to be administratively noticed are; the heading and the columns marked "description", "Coupon Rate," "Issue Date," and "Maturity Date" of Exhibit GET-7 page 1, and the question and answer starting on p. 20 l. 18 of the testimony.

14. Public Service's net incremental cost of acquiring eligible energy resources are recorded in the RESA deferred account.

15. The RESA was established by Decision No. C06-0155 on February 22, 2006 in Proceeding No. 06S-016E as a forward-looking deferred account mechanism designed to collect revenues from customers to provide funding for implementing the RES, the maximum amount that can be charged to customers by investor-owned qualifying retail utilities, such as Public Service, for acquiring eligible energy resources to satisfy that the RES is 2 percent of the total annual electric bills for each customer.

16. The ECA is an adjustment mechanism designed to recover the retail costs of fuel, purchased energy, and purchased wheeling utilized to supply electric retail service. The ECA is the primary mechanism through which Public Service recovers the costs of purchased renewable energy. The ECA is used to recover the "avoided energy costs" or the *non-incremental* portion of the renewable energy purchases from acquiring eligible energy resources for compliance with the RES.

17. In 2010, 2011, and 2012, Public Service used the ECA deferred account as a true-up mechanism to ensure full recovery of the costs of eligible energy resources. The incremental costs associated with eligible energy resources, except those acquired under the SolarRewards program were initially charged in full against the ECA.

18. For on-site solar resources acquired under the SolarRewards program, the costs were initially charged against the RESA deferred account. The modeled "Avoided Energy Costs" of the resources acquired under the SolarRewards program were then transferred from the RESA deferred account to the ECA deferred account. After that transfer, only the incremental costs of the generation acquired under the SolarRewards program were to remain in the RESA

deferred account, while the ECA was to be charged only for "Avoided Energy Cost" attributable to the on-site solar generation installed under the SolarRewards program.

19. During an internal audit of the RESA in March 2012, Public Service discovered that the Avoided Energy Costs for the SolarRewards program were not updated accurately during 2010 and 2011. Public Service had not used the correct "Avoided Energy Cost" factors when calculating the "Avoided Energy Cost" amount to be transferred from the RESA to the ECA. *Hearing Exhibit 1, p. 3, l. 8-23.*

20. Public Service failed to update the estimated "Avoided Energy Cost", therefore the amount that was approved for 2009 was used for the years 2010 through 2012. *Hearing Transcript p. 82, l. 13-20.*

21. After an investigation, Public Service determined that for 2010, 2011, and 2012, the RESA deferred account was charged approximately $26.2 million of Avoided Energy Costs, resulting in the RESA deferred account being charged $26.2 million more than it should have been charged.

22. Public Service has put in place new procedures to lessen the possibility of this mistake being repeated. *See Id*.

23. The $26.2 million in avoided energy costs has not yet been collected from customers either through the ECA or the RESA. *Hearing Transcript p. 150, l. 7-9.*

24. The $26.2 million in avoided costs at issue in the above-captioned proceeding were prudent expenditures.

25. The RESA deferred account is a forward-looking deferred adjustment clause. The RESA deferred account has interest applied at the Company's after-tax Weighted Average

Cost of Capital, which has been approximately 7.7 percent. *Hearing Exhibit No. 4, p., 4, l. 7-9.* Calculating interest at this rate would result in $2,661,799.[7] *Hearing Exhibit No. 6 p. 8, l. 12-15.*

26. The interest applied to any balance in the ECA account is based upon the three-month commercial paper rate, which has been approximately 0.3 percent. Calculating interest at this rate would result in roughly $104,000.[8] Hearing Exhibit No. 5, p. 14, l.4-13.

27. The long-term debt interest rates for Public Service were 5.83 percent in 2010, 5.78 percent in 2011, and 4.86 percent in 2012. *Hearing Exhibit 4, p. 6, l.22-23* and *Hearing Transcript p. 115, l. 20-23.* The $26.2 million in avoided costs would earn a total of $1,862,875[9] in earned interest if the long-term debt interest rates are used. *Hearing Exhibit* 4, p. 7, l.7-14.

III. DISCUSSION AND CONCLUSIONS

28. The parties in the above-captioned proceeding do not contest the prudency of the $26.2 million avoided costs. The issues presented are only if the $26.2 million in avoided costs placed in the RESA deferred account rather than the ECA deferred account should be considered an accounting error, or if they should be treated as a billing error and what if any interest should accrue on the amount of any avoided costs to be transferred to the ECA.

29. The parties also do not argue that there was any malice on the part of Public Service for the error. All parties are in agreement that the error was not intentional and actions were taken to correct the error as soon as it was discovered by Public Service.

[7] Interest for 2010, 2011, and 2012.
[8] Interest through August 2013.
[9] Interest for 2010, 2011, and 2012.

A. Accounting Error v. Billing Error

30. The OCC, Climax, and Evraz urge the Commission to treat the failure to transfer the $26.2 million in avoided costs from the RESA to the ECA as a billing error. The OCC believes that an accounting error by Public Service led to billing errors. Climax and Evraz do not view the incorrect avoided cost transfers as an accounting error. The OCC, Climax, and Evraz look to Rule 3402 for justification of their conclusion.

31. The OCC states that "[t]here is no dispute in this proceeding that Public Service made accounting errors that led to $26.2 million being assigned to the RESA account instead of timely billed through the ECA." *OCC Post Hearing Statement of Position, p. 2.* The OCC states that these "accounting errors led to billing errors" since 2010 by under-billing ratepayers for the ECA adjustments and overbilling for the RESA adjustments. *id*. The OCC looks to the title of Rule 3402, Adjustments for Meter and Billing Errors and the following language in support of their argument:

> A utility shall adjust customer charges for electricity incorrectly metered or billed as follows."
>
> *Rule 3402(a), 4 CCR 723-3.*

32. Climax and Evraz also argue that to label the errors an "accounting errors" misses the point that the errors led to billing errors.[10] *Climax and Evraz Statement of Position, p. 8.*

33. Public Service, Staff, and WRA urge the Commission to treat the $26.2 million as an accounting and not a billing error. These parties do not believe that Rule 3402 encompasses this type of error. These Parties argue that the error has not passed through the billing system.

[10] Climax and Evraz do describe the errors also in the terms of "a simple clerical error." Climax & Evraz Statement of Position, p. 8.

34. Public Service also cites Commission Proceeding No. 03P-232G in which a different type of accounting error made by a natural gas company was not treated as a billing error.[11]

35. The undersigned ALJ agrees with Public Service, Staff, and WRA that these errors were only accounting errors.

36. As stated by Staff witness Dalton, "it never made it to the billing system." *Hearing Transcript p. 166, l. 4-9.* These are accounting errors due to the failure of Public Service to update their model for "Avoided Energy Cost" for the SolarRewards Program and nothing more. Had the model been updated the avoided costs would have been transferred to the ECA. The amount to bill ratepayers due to the "Avoided Energy Cost" had been determined; ratepayers simply had not yet been billed. No party argues that these were not prudent expenditures and therefore the expenditures are recoverable by Public Service.

37. An accounting error is not a billing error[12] and in this instance does not transform into a billing error. Since the accounting error never made it to the billing system, Rule 3402 is not applicable to the situation.

38. Public Service is entitled to full recovery of the $26.2 million through a sub-account within the ECA to be recovered over a 12-month period.

[11] In Proceeding No. 03P-232G Staff of the Public Utilities Commission discovered that accounting errors were made when some gas supplies purchased for the Asset Optimization Program were comingled with gas purchased for general system customers' use. As a remedy Aquila, Inc. agreed to implement procedures to reduce the likelihood of the error being repeated. The errors were only referred to as "accounting errors" in Decision No. R05-1011 issued August 24, 2005, by ALJ Jennings-Fader in approving a settlement. Exceptions and Application for Rehearing, Reargument and Reconsideration, for issues not related to the accounting error, were denied by the Commission in Decision No. C06-0459 issued April 26, 2006 and Decision No. C06-0696 June 14, 2006.

[12] It is noted that all parties in their statements of position either refer to the error as an "accounting error" or a "simple clerical error."

B. Interest Rate

39. In the instant proceeding, based upon statute and Commission decision,[13] interest should be applied to the $26.2 million in avoided costs being transferred from the RESA to the ECA. The parties differ on the proper amount of interest.

40. Public Service, while considering the failure to transfer the avoided costs from the RESA to the ECA, to be "accounting errors" argues that these accounting errors have "in effect" become a loan to the ratepayers. Public Service asserts that the failure to transfer these avoided costs to the ECA has led to these costs not being billed to the ratepayers and this non-payment becoming a loan to the ratepayers. *See Hearing Exhibit 4, p. 6, l.8-21.*

41. Public Service argues that the difference in the interest rates between the RESA and the ECA is due to the difference in time it takes for costs in each of the accounts to be recovered. Due to the failure to transfer the avoided costs from the RESA to the ECA these costs have been carried by the Company for a longer time than normal. Public Service believes that these additional carrying costs combined with the benefit ratepayers received from the "loan" justify an interest rate in excess of the ECA interest rate but lower than the RESA interest rate. As a compromise between the interest rate of the ECA (.3 percent)[14] and the interest rate of the RESA (7.7 percent),[15] Public Service proposes the long-term debt interest rate be applied to the amount of avoided costs to be transferred to the ECA.[16]

[13] The interest rate for the RESA is found at § 40-2-124(g)(I)(B), C.R.S., and the interest rate for the ECA is found at Commission Decision No. C06-1379 ¶ 66.

[14] This interest rate would result in approximately $104,000 in interest as of August 2013.

[15] This interest rate would result in approximately $2,661,799 in interest between 2010 to 2012.

[16] The Public Service long-term debt rate was 5.83 percent in 2010, 5.78 percent in 2011, and 4.86 percent in 2012. This would result in a total of $1,862,875 in interest between 2010 through 2012.

42. Public Service states that their goal is to leave the company and the ratepayers in a position no better or no worse than if the accounting errors had not been made. *See Hearing Exhibit 4, p. 6, l.1-5.*

43. Staff and WRA also believe that the ratepayers and the Company should be in a position no better or no worse than if the accounting error had not been made. Their proposal is that the rate of interest applicable to the ECA during this time period should be applied to the $26.2 million in avoided costs to be transferred to the ECA. *See Staff Statement of Position, p. 8-12 and WRA Statement of Position, p. 5-6.*

44. Staff, while acknowledging that the exact interest cannot be recreated, states that "[i]f either customers or the Company will inevitably be in a worse position, justice demands that it be the Company, which bears sole responsibility for its errors." *See Staff's Statement of Position p. 13.*

45. The argument of Public Service fails for a variety of reasons. Just as the accounting errors cannot be considered billing errors they also may not be considered loans. To accept Public Service's argument that the accounting errors had "in effect" become loans to the ratepayers due to the failure to bill ratepayers costs that should have been transferred to the ECA leads to the conclusion that the errors were billing errors. Public Service in their argument for a higher interest rate than allowed by the ECA undercuts their argument that the errors were not billing errors. The errors were accounting errors and not loans to ratepayers.

46. The interest rate requested by Public Service has no justification other than it falls between the RESA rate and the ECA rate. While presented as a compromise, it falls far closer to

the RESA rate of 7.7 percent rather than the ECA rate of 0.3 percent.[17] There was no evidence presented to show the actual carrying costs incurred by the Company or that the proposed interest rate was appropriate considering those costs. *Hearing Transcript p. 128, l. 2-14.*

47. Further, the stated goal of all parties is to leave Public Service and the ratepayers in a position no better or no worse than if the accounting error had not been made. The argument of Staff and WRA, to use the interest rate associated with the ECA, is persuasive since the accounting error is entirely the fault of Public Service and therefore they should be the party at risk of ending up in a worse position. It is not just and reasonable to allow a resolution which has a great risk, if not an almost certainty, of Public Service ending up in a better position and the ratepayers being in a worse position, than had the error not been made when the error was the fault of Public Service.

48. It seems evident that if Public Service had taken the appropriate actions, at the appropriate time, regarding the transference of the avoided costs to the ECA that the amount of interest accrued related to those transferred amounts would be about $104,000 through August of 2013. Through prior Commission Decisions this interest rate has been found just and reasonable. Public Service has failed to show that their proposed interest rate is just or reasonable.

49. The interest rate that is most appropriate is the ECA interest rate that corresponds to the time when the costs were improperly booked into the RESA. This rate is just and reasonable and also shall most closely place both the Company and the ratepayers in a position no better and no worse than if the error had not been made.

[17] Public Service's compromise position would allow recovery of 70 percent of the RESA interest rate between 2010 through 2012.

50. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. The effective date of the tariff sheets filed with Advice Letter No. 1644 on July 15, 2013, are permanently suspended and may not be further amended.

2. The $26.2 million of avoided costs were prudently incurred by Public Service Company of Colorado (Company).

3. The Company's request to transfer $26.2 million in avoided costs from the Renewable Energy Standard Adjustment (RESA) deferred account to the Electric Commodity Adjustment (ECA) deferred account is approved. The Company shall establish a sub-account within the ECA and these avoided costs shall be booked into this ECA sub-account and be recovered over a 12-month period without accruing additional interest.

4. The Company shall be allowed to collect interest on the $26.2 million at the applicable ECA deferred account interest rate that corresponds with the time the costs were improperly booked into the RESA deferred account. This interest shall be collected through the ECA deferred account.

5. No more than 30 days after this Recommended Decision becomes the Decision of the Commission, if that is the case, the Company shall file a new advice letter and tariff on not less than two business days' notice. The advice letter and tariff shall be filed as a new advice letter proceeding and shall 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 prior to the effective date. The advice letter and tariff must

comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice.

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)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director